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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~279.~~ 271

JAMES A. LOVEJOY, IMPLEADED WITH J. B. SHAW, HERETOFORE IMPLEADED WITH SUMNER W. FARNHAM, PLAINTIFF IN ERROR,

VS.

CARROLL C. SPAFFORD AND DE WITT C. CLARK, COPARTNERS, AS SPAFFORD & CLARK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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FILED SEPTEMBER 30, 1874.

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SUPREME COURT OF THE UNITED STATES.

No. 279.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Minnesota, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Carroll C. Spafford and De Witt C. Clark, copartners as Spafford & Clark, plaintiffs, and James A. Lovejoy, impleaded with J. B. Shaw, heretofore impleaded with Sumner W. Farnham, defendant, a manifest error hath happened, to the great damage of the said defendant, as is said: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the justices of the Supreme Court of the United States, at the Capital, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this tenth day of August, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

[SEAL.] H. E. MANN,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

2 The answer of the judges of the circuit court of the United States for the district of Minnesota in the within writ mentioned.

The record and proceedings whereof mention is within made, with all things concerning the same, are hereby respectfuly certified to the justices of the Supreme Court of the United States within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at St. Paul, in the district of Minnesota, this second day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

[SEAL.] H. E. MANN,
Clerk U. S. Circuit Court, Dist. of Minnesota.

(Indorsed:)
A 461. Supreme Court U. S. James A. Lovejoy, imp'd, &c., plff. in error, vs. Carroll C. Spafford et al., defts. in error. Writ of error.
Deposited in my office Aug. 10, 1874.

H. E. MANN,
Clerk U. S. Circuit Court, Dist. Minn'a.

3 *Schedule.*

United States circuit court, district of Minnesota.

CARROL C. SPAFFORD AND DE WITT C. CLARK, copartners, doing business under the firm name and style of Spafford & Clark,	
vs.	Complaint.
J. B. SHAW, SUMNER W. FARNHAM, AND JAS. A. Lovejoy, late partners under the firm name and style of J. B. Shaw & Co.	

The plaintiffs complain and allege that they are, and were at the times hereinafter stated, citizens of the State of Wisconsin, and copartners, doing business in the city of Eau Claire, in said State, under the firm-name and style of Spafford & Clark; and that the defendants, Sumner W. Farnham and James A. Lovejoy, are citizens of the State of Minnesota, and the defendant J. B. Shaw is a citizen of the State of Iowa; that the defendants were, at the times hereinafter mentioned, partners, doing business in the city of Davenport and State of Iowa, under the firm name and style of J. B. Shaw & Co.

I. For a first cause of action, the plaintiffs further allege that,
4 on the 27th day of September, A. D. 1870, at Read's Landing, in the State of Minnesota, the defendant J. B. Shaw made his certain draft or bill of exchange in writing, dated on the day and at the place last aforesaid, directed to the defendants, by their said firm of J. B. Shaw & Co., at Davenport, in the State of Iowa, whereby, twenty days after the date thereof, he did request the defendants, by their said firm-name of J. B. Shaw & Co., to pay to the order of the plaintiffs the sum of four thousand and eighteen & $\frac{55}{100}$ dollars, at the First National Bank of Davenport, Iowa, for value received, and charge the same to his, the said J. B. Shaw's, account, and then and there delivered the same, duly stamped in accordance with the revenue laws of the United States, to the plaintiffs, and which said draft or bill of exchange was in the words and figures following, viz:

"$4,018.55. READ'S LANDING, *Sept.* 27, 1870.

"Twenty days after date, pay to the order of Mess. Spafford & Clark four thousand eighteen $\frac{55}{100}$ dollars, payable at First National Bank, Davenport, Ia., value received, and charge the same to the account of—

(Signed) "J. B. SHAW.

"To J. B. SHAW & Co.,
5 "*Davenport, Ia.*"

[U. S. revenue stamp, $2.05, duly cancelled.]

That the said draft was thereupon duly presented to the defendants for acceptance, and was by them duly accepted in writing; that on the maturity of the said draft or bill of exchange the plaintiffs duly presented the same to the defendants and demanded payment thereof, which was refused; that thereupon the said draft or bill of exchange was duly protested for non-payment, and due notice of such demand, refusal, and protest was on the same day given to all the defendants, and the notarial fee for said protest and notice was the sum of two dollars,

which the plaintiffs then and there paid; that the plaintiffs are still the owners and holders of the said draft or bill of exchange, and that no part thereof or of said protest-fees has been paid.

II. For a second cause of action, the plaintiffs allge that again, and on the said 27th day of September, A. D. 1870, at said Read's Landing, the said defendant J. B. Shaw made his certain other draft or bill of exchange in writing, dated on the day and at the place
6 last aforesaid, directed to the defendants, by their said firm-name of J. R. Shaw & Co., at Davenport, in the State of Iowa, whereby, thirty days from the date thereof, he did request the defendants, by their said firm-name of J. B. Shaw & Co., to pay to the order of one Ira Mead one thousand one hundred and sixty-six & $\frac{45}{100}$ dollars at said First National Bank, in Davenport, Iowa, for value received, and charge the same to his, the said J. B. Shaw's, account, and then and there delivered the same, duly stamped in accordance with the revenue laws of the United States, to the said Ira Mead, and which said draft or bill of exchange was in the words and figures following, viz:

"$1,166.45. READ'S LANDING, *Sept.* 27, 1870.

"Thirty days from date pay to the order of Ira Mead one thousand one hundred and sixty-six $\frac{45}{100}$ dollars, payable at 1st Nat'l Bank, Davenport, Ia., value received, and charge the same to account of—

(Signed) "J. B. SHAW.

"To J. B. SHAW & Co.,
"*Davenport, Ia.*"

[U S. rev. stamp, 60 cents, cancelled.]

That the said draft or bill of exchange was thereupon duly presented to the defendants for acceptance, and was duly ac-
7 cepted by them in writing; that afterwards, and before the maturity of the said draft or bill of exchange, the said Ira Mead duly indorsed the same in blank and negotiated it, for value received, to the plaintiffs; that on the maturity of the said draft the plaintiffs duly presented the same to the defendants and demanded payment thereof, which was refused; that thereupon the said draft or bill of exchange was duly protested for non-payment, and due notice of such demand, refusal, and protest was on the same day given to all the defendants, and the notarial fee for said protest and notice was the sum of two dollars, which the plaintiffs then and there paid; that the plaintiffs are still the owners and holders of the said draft or bill of exchange, and that no part thereof or of said protest-fees has been paid.

Wherefore the plaintiffs demand judgment against the said defendants for the sum of five thousand one hundred and eighty-nine dollars, with interest on the sum of four thousand and twenty & $\frac{55}{100}$ dollars from the 20th day of October, A. D. 1870, and with interest on the further sum of one thousand one hundred and sixty-eight and $\frac{45}{100}$ dol-
8 lars from the 31st day of October, A. D. 1870, besides the costs and disbursements of this action.

GEORGE L. OTIS &
BARTLETT & HAYDEN,
Plaintiffs' Attorneys.

STATE OF MINNESOTA,
County of Ramsey, ss:

George L. Otis, of said county, being duly sworn, says that he is one of the attorneys for the plaintiffs in the above-entitled action; that the

foregoing complaint is true according to the best of his knowledge, information, and belief, and that the reason why this verification is not made by said plaintiffs is that they are both absent from the county of Ramsey, Minnesota, where resides this deponent, their said attorney.

GEO. L. OTIS.

Sworn & subscribed to before me this 10th day of April, A. D. 1872.

H. E. MANN, *Clerk.*

(Indorsed:) U. S. circuit court, district of Minnesota. Spaffred
9 & Clark vs. J. B. Shaw & Co. Complaint. Filed April 10, 1872. H. E. Mann, clerk. Geo. L. Otis & Bartlett & Hayden, plffs.' attys.

Summons.

10 UNITED STATES OF AMERICA,
District of Minnesota, ss:

In the circuit court of the United States for the district of Minnesota.

CARROL C. SPAFFRED & DE WITT C. CLARK, copartners, doing business under the firm-name of Spaffred & Clark,
against
J. B. SHAW, SUMNER W. FARNHAM, AND JAMES A. Lovejoy, late partners under the firm-name of J. B. Shaw & Co.

The President of the United States of America to the defendants above named, greeting:

You are hereby summoned and required to answer the complaint in this action, which has been filed in the office of the clerk of this court, in Saint Paul, county of Ramsey, and State of Minnesota, and file your answer in said clerk's office within twenty days after the service hereof, excluding the day of such service; and if you fail to answer the complaint as aforesaid, the plaintiff will take judgment against you for the sum of five thousand one hundred and eighty-nine dollars, with interest on the sum of four thousand and twenty & $\frac{55}{100}$ dollars from the 20th day of October, A. D. 1870, and with interest on the further sum of one thousand one hundred and eighty-eight & $\frac{45}{100}$ dollars from the 31st day of October, A. D. 1870, besides the costs and disbursements of this action. For the marshal of the district of Minnesota to execute.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States of America, at Saint Paul, in said district of of Minnesota, this tenth day of April, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-sixth year.

[SEAL OF COURT.] H. E. MANN, *Clerk.*

GEO. L. OTIS,
Plaintiffs' Attorney.

11 DIST. OF MINNESOTA, *ss:*

I hereby certify that I served the within summons on the within-named

J. B. Shaw and Sumner W. Farnham personally, at Hennepin County, in said dist., April 15, 1872. James A. Lovejoy not found.

AUG. ARMSTRONG,
U. S. Marshal,
By J. R. CLEVELAND, *Depy.*

Fees: $7.25.

(Indorsed:) United States circuit court, district of Minnesota. No. Carrol C. Spaffred et al., plaintiffs, vs. J. B. Shaw et al., defendants. Summons. Filed May 3, 1872. H. E. Mann, clerk. Geo. L. Otis, plaintiffs' attorney.

12 United States circuit court, district of Minnesota.

CARROL C. SPAFFORD AND DE WITT C. CLARK, copartners, doing business under the firm name and style of Spafford & Clark,
against
SUMNER W. FARNHAM AND JAMES A. LOVEJOY, impleaded with J. B. Shaw, as late partners under the firm name and style of J. B. Shaw & Co.

Sumner W. Farnham and James A. Lovejoy, two of the defendants in the above-entitled action, for their separate answer to the complaint of the plaintiffs above named, say that, as to whether the above-named plaintiffs are or ever have been citizens of the State of Wisconsin, and as to whether they are or ever have been copartners as stated in said complaint, or otherwise, these defendants have not, nor has either of them, any knowledge nor information thereof sufficient to form a belief. These defendants aver that the above-named Sumner W. Farnham, James A. Lovejoy, and J. B. Shaw were not, at nor during any of the times mentioned in said complaint, nor at any other time, partners, nor doing business at the city of Davenport, and State of Iowa, nor elsewhere,
13 under the firm name and style of J. B. Shaw & Co., nor under any firm name nor style, nor at all. These defendants aver that, as to the allegations and statements contained in said complaint respecting the alleged making of the drafts or bills of exchange mentioned therein, and respecting the alleged delivery of the one first mentioned therein to the plaintiffs, and of the one last set forth therein to Ira Mead, and respecting the alleged indorsement and negotiation of said last-mentioned draft or bill of exchange by said Ira Mead to the plaintiffs, and also as to the allegations in said complaint that the plaintiffs are the owners and holders of said drafts or bills of exchange, and that the same have not been paid, nor any part thereof, these defendants have not, nor has either of them, any knowledge nor information thereof nor concerning any of such allegations nor statements sufficient to form a belief, except that these defendants admit that they have paid nothing upon either of said drafts or bills of exchange. But these defendants aver that neither of said drafts or bills of exchange was ever drawn upon nor directed to, nor presented for payment to, nor payment thereof demanded these defendants, nor either of them, nor any firm of which either
14 of these defendants was a partner, nor any person having any authority to act for nor to bind these defendant' or either of them, except that during the month of February, A. D. 1872, payment of said drafts or bills of exchange was, at Minneapolis, in the State of Minneso'a,

demanded of the above-named Sumner W. Farnham, and refused. That no notice of any demand, refusal, or protest of or concerning either of said drafts or bills of exchange was ever given to these defendants, or either of them, nor to any firm of which either of them was a partner.

Wherefore these defendants ask to be hence dismissed with costs.

LOCHREN, McNAIR & GILFILLAN,
Attorneys for Defts. Farnham & Lovejoy.

HENNEPIN COUNTY, *ss:*

James A. Lovejoy, being duly sworn, says he is one of the defendants in the above-entitled action; that he has heard read the foregoing answer, and knows its contents, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to these matters he believes it to be true.

JAMES A. LOVEJOY.

15 Subscribed and sworn to before me this 15th day of May, A. D. 1872.

[SEAL.] BUDD REEVE,
U. S. Commissioner, Dist. of Minn'a.

(Indorsed:) U. S. circuit court, district of Minnesota. Spafford & Clark vs. J. B. Shaw & Co. Answer of Farnham & Lovejoy. Filed May 16, 1872. H. E. Mann, clerk. Lochren, McNair & Gilfillan, attys. for defts. Farnham & Lovejoy.

16 United States circuit court, district of Minnesota.

Term minutes, June term, A. D. 1873, June 24, 1873.

CARROLL C. SPAFFORD ET AL.
vs.
JOHN B. SHAW ET AL.

This cause being reached on the calendar and called for trial, Messrs. Bartlett & Hayden and Geo. L. Otis appeared for the plaintiffs, and Messrs. Wm. Lochren and C. K. Davis appeared for the defendants. Whereupon, a jury being called, came, to wit, J. A. Hawkins, F. P. Pond, S. J. Johnson, J. W. Gardner, Geo. Schmidt, L. A. Cornell, S. R. Terwilleger, Reuben Hans, John Odell, H. B. Cory, John Hutchinson, & Isaac Elliott, who are duly impannelled and sworn.

Case opened on the part of the plaintiff, by Geo. L. Otis, eqr.

James A. Lovejoy is sworn and examined as a witness for plaintiffs.

Whereupon the defendants made a motion for a continuance, which was granted by the court, on condition that defendants shall pay to the plaintiffs the costs of the term; and it is ordered by the court that
17 the plaintiffs have leave to amend their complaint, if they shall be so advised; that they have ten days' time for that purpose; and if they shall amend the same, that the defendants have twenty days within which to answer such amended complaint.

Amended complaint.

18 United States circuit court, district of Minnesota.

CARROLL C. SPAFFORD AND DE WITT C. CLARK, copartners, doing business under the firm-name of Spafford & Clark.
agst.
J. B. SHAW AND JAMES A. LOVEJOY, IMPLEADED with Sumner W. Farnham, late partners under the firm-name and style of J. B. Shaw & Co.

Now come the plaintiffs, by leave of the court, and, for an amended complaint herein, allege that they are, and were at the times hereinafter stated, citizens of the State of Wisconsin, and copartners, doing business at the city of Eau Claire, in the State of Wisconsin, under the firm name and style of Spafford & Clark.

That the defendant James A. Lovejoy is a citizen of the State of Minnesota, and the defendant J. B. Shaw is a citizen of the State of Iowa; that at the times hereinafter stated the said defendant James A. Lovejoy was doing business at the city of St. Anthony, in the State
19 of Minnesota, and elsewhere, under the name of Farnham & Co., one Rufus Farnham being nominally a partner with him, but having no real interest in the business of said Farnham & Co., and at the times hereinafter stated the said defendant Lovejoy, by the said name of Farnham & Co., and the defendant J. B. Shaw were copartners, doing a lumber business, and engaged in the business of buying and selling lumber, at the city of Davenport, in the State of Iowa, and elsewhere, under the firm name and style of J. B. Shaw & Co.

1st. For a first cause of action, the plaintiffs further allege that on the 27th day of September, A. D. 1870, at Read's Landing, in the State of Minnesota, the defendant J. B. Shaw made his certain draft or bill of exchange in writing, dated on the day and at the place last aforesaid, and directed to the defendants, by their said firm-name of J. B. Shaw & Co., at Davenport, in the State of Iowa, whereby, twenty days after the date thereof, he did request the defendants by their said firm-name of J. B. Shaw & Co., to pay to the order of the plaintiffs the sum of four thousand and eighteen & $\frac{55}{100}$ dollars, at the First National Bank
20 of Davenport, Iowa, for value received, and charge the same to his, the said J. B. Shaw's, account, and then and there delivered the same, duly stamped in accordance with the revenue laws of the United States, to the plaintiffs, and which said draft or bill of exchange was in the words and figures following, viz:

"$4,018.55. READ'S LANDING, *Sept. 27th*, 1870.

"Twenty days after date pay to the order of Mess. Spafford & Clark four thousand eighteen $\frac{55}{100}$ dollars, payable at 1st National Bank, Davenport, Ia., value received, and charge the same to account of—
(Signed) "J. B. SHAW.

"To J. B. SHAW & Co.,
"*Davenport, Ia.*"

[U. S. revenue-stamp, $2.05, duly cancelled.]

That the said draft was thereupon duly presented to the defendants for acceptance, and was by them duly accepted in writing; that on the maturity of said draft or bill of exchange the plaintiffs duly presented the same to the defendants and demanded payment thereof, which was

refused; that thereupon the said draft or bill of exchange was duly protested for non-payment, and due notice of such demand, refusal, and protest was on the same day given to all the defendants, and the
21 notarial fee for said protest and notice was the sum of two dollars, which the plaintiffs then and there paid; that the plaintiffs are still the owners and holders of the said draft or bill of exchange, and that no part thereof or of said protest-fees has been paid.

2nd. For a second cause of action, the plaintiffs allege that again, and on the said 27th day of September, A. D. 1870, at said Reed's Landing, the said defendant J. B. Shaw made his certain other draft or bill of exchange in writing, dated on the day and at the place last aforesaid, and directed to the defendants, by their said firm-name of J. B. Shaw & Co., at Davenport, in the State of Iowa, whereby, thirty days from the date thereof, he did request the defendants, by their said firm-name of J. B. & Shaw & Co., to pay to the order of one Ira Mead the sum of one thousand one hundred and sixty-six and $\frac{45}{100}$ dollars, at said First National Bank, in Davenport, Iowa, for value received, and charge the same to his, the said J. B. Shaw's, account, and then and there delivered the same, duly stamped in accordance with the revenue laws of the United States, to the said Ira Mead, and which said draft or bill of exchange was in the words and figures following, viz:

22 "$1,166.45. READ'S LANDING, *Sept. 27th*, 1870.

"Thirty days from date pay to the order of Ira Mead one thousand one hundred and sixty-six $\frac{45}{100}$ dollars, payable at 1st Nat'l Bank, Davenport, Ia., value received, & charge the same to account of

(Signed) "J. B. SHAW.

"To J. B. SHAW & Co.,
"*Davenport, Ia.*"

[U. S. rev. stamp, 60 cents, cancelled.]

That the said draft or bill of exchange was thereupon duly presented to the defendants for acceptance, and was duly accepted by them in writing; that afterwards, and before the maturity of the said draft or bill of exchange, the said Ira Mead duly indorsed the same in blank, and negotiated it for value received to the plaintiffs; that on the maturity of the said draft the plaintiffs duly presented the same to the defendants and demanded payment thereof, which was refused; that thereupon the said draft or bill of exchange was duly protested for non-payment, and due notice of such demand, refusal, and protest was on the same day given to all the defendants, and the notarial fee for said protest and notice was the sum of two dollars, which the plaintiffs then and there
23 paid; that the plaintiffs are still the owners and holders of the said draft or bill of exchange, and that no part thereof no' of said protest-fees has been paid.

Wherefore the plaintiffs demand judgment against the said defendants for the sum of five thousand one hundred and eighty-nine dollars, with interest on the sum of four thousand and twenty and $\frac{55}{100}$ dollars from 20th day of October, A. D. 1870, and with interest on the further sum of one thousand one hundred and sixty-eight and $\frac{45}{100}$ dollars from the 31st day of October, A. D. 1870, besides the costs and disbursements of this action.

GEO. L. OTIS, WITH
BARTLETT & HAYDEN,
Plffs.' Attorneys.

DISTRICT OF MINNESOTA, *ss:*

Geo. L. Otis, of said district, being duly sworn, deposes and says that he is one of the attorneys for the plaintiffs in the above-entitled action; that the foregoing amended complaint is true, to the best of his knowledge, information, and belief, and that the reason this verification
24 is not made by said plaintiffs, or either of them, is that they are both absent from said district where resides this affiant, their said attorney.

GEO. L. OTIS.

Subscribed and sworn to before me this 2d day of July, A. D. 1873.

H. E. MANN, *Clerk.*

25 (Indorsed:) U. S. circuit court, district of Minnesota. Spafford & Clark vs. J. B. Shaw & Co. Amended complaint. Filed July 2, 1873. H. E. Mann, clerk. Geo. L. Otis, with Bartlett & Hayden, attys. for plffs.

26 United States circuit court, district of Minnesota.

CARROL C. SPAFFORD AND DE WITT C. CLARK, copartners, doing business under the firm of Spafford & Clark,
against
JAMES A. LOVEJOY, IMPLEADED WITH J. B. Shaw, and before impleaded with S. W. Farnham, as late partners as J. B. Shaw & Co.

And now comes James A. Lovejoy, one of the defendants above named, and, for his answer to the plaintiffs' amended complaint, says that as to whether the above-named plaintiffs are or ever have been citizens of the State of Wisconsin, and as to whether they are or ever have been copartners in business, as stated in said complaint, he has no knowledge nor information thereof sufficient to form a belief. He admits that he is a citizen of the State of Minnesota, but denies that the defendant J. B. Shaw is a citizen of the State of Iowa.

This defendant says, further, that he was not during any of the times mentioned in said complaint doing any business at the city of Saint Anthony, in the State of Minnesota, nor elsewhere, under the
27 name of Farnham & Co., and that Rufus Farnham was not during any of said times, nominally nor otherwise, a partner with this defendant; and that said defendant Lovejoy was not, by the name of Farnham & Co., nor by any other name, nor at all during any of the times stated in said complaint, a copartner with the defendant J. B. Shaw, nor engaged with him in the lumber business nor in the buying or selling of lumber, nor in business of any kind, at the city of Davenport, in the State of Iowa, nor at any other place, under the name and style of J. B. Shaw & Co., nor under any name or style, nor at all. As to all the allegations and statements contained in said complaint respecting the alleged making of the drafts or bills of exchange mentioned therein, and respecting the alleged delivery of the one first set forth therein to the plaintiffs and the one secondly set forth therein to Ira Mead, and respecting the alleged negotiation and endorsement of the one last mentioned from said Ira Mead to the plaintiffs, and also as to the allegations of said complaint that the plaintiffs are owners and holders
28 of said drafts or bills of exchange, and that no part thereof has been paid, this defendant says that he has no knowledge nor in-

formation thereof nor concerning any of such allegations or statements sufficient to form a belief, except that he admits that he has paid nothing upon either of said pretended drafts or bills of exchange. But this defendant avers that neither of said drafts or bills of exchange were ever drawn upon, nor directed to, nor presented for acceptance to, nor accepted by, nor presented for payment to, nor payment thereof demanded of, this defendant, nor of any firm of which this defendant was partner, nor to any person having any authority to act for or bind this defendant; and that no notice of any demand, refusal, or protest of either of said pretended drafts of exchange was ever given to this defendant, nor to any firm of which this defendant was a member. And as to all the allegations contained in the said complaint, save only such as are hereinbefore specifically admitted and those respecting which this defendant denied that he has knowledge or information sufficient to form a
29 belief, this defendant specifically denies each and every of them, and asks hence to be dismissed with costs.

LOCHREN, McNAIR & GILFILLAN,
Attys. for Deft. Lovejoy.

STATE OF MINNESOTA,
Hennepin County, ss:

James A. Lovejoy, being duly sworn, says that he is the defendant who makes the foregoing answer; that he has heard the same read and knows its contents, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

JAMES A. LOVEJOY.

Subscribed & sworn to before me this 12th day of August, A. D. 1873.

[NOTARIAL SEAL.] P. W. LAPP,
Notary Public, Minnesota.

30 (Indorsed:) United States circuit court. Spafford & Clark vs. James A. Lovejoy et al. Answer of deft. Lovejoy. Filed Aug. 14, 1873. H. E. Mann, clerk. Lochren, McNair & Gilfillan, attys. for deft. Lovejoy, Minneapolis, Minn.

31 United States circuit court for the district of Minnesota.

Term minutes December term, A. D. 1873, *December* 9, 1873.

CARROLL C. SPAFFORD AND DE WITT C. Clark, copartners, doing business under the firm-name of Spafford & Clark,
vs.
JAMES, A. LOVEJOY, IMPLEADED WITH J. B. Shaw, and before impleaded with S. W. Farnham, as late partners as J. B. Shaw & Co.

This cause being reached on the calendar and called, Messrs. Bartlett & Hayden and Geo. L. Otis, esqr., appeared for the plaintiffs, and Messrs. Lochren & McNair and Cushman K. Davis, esqr., for the defendant James A. Lovejoy.

Whereupon a jury being called came, to wit, Lewis M. Davis, E. M. Cox, Chas. Wheeler, B. F. Steadman, J. M. D. Craft, E. C. Geary, W.

H. Getchell, L. A. Tennison, Ira C. Trowbridge, Robert Roberts, C. W. Childs, & Thomas M. Pugh, who are duly impannelled and sworn. The case is opened on the part of the plaintiffs by Geo. L. Otis, esqr.

Henry H. Hayden is sworn and examined as a witness for plaintiffs.
Geo. L. Otis " " " "
Richard T. Wilson " " " "
32 De Witt C. Clark " " " "
A. E. Angell " " " "
H. E. Mann " " " "
Ira Mead " " " "

And here the plaintiffs rest their case.

The case on the part of the defendant Lovejoy is opened by Cushman K. Davis, esqr.

James A. Lovejoy is sworn and examined as a witness for defendant.

United States circuit court for the district of Minnesota.

Term minutes December term, A. D. 1873, *December* 10, 1873.

CARROLL C. SPAFFORD & DE WITT C. CLARK, copartners, doing business under the firm-name of Spafford & Clark,
vs.
JAMES A. LOVEJOY, IMPLEADED WITH J. B. Shaw, and before impleaded with S. W. Farnham, as late partners as J. B. Shaw & Co.

This cause coming on to be further heard, the attorneys for the respective parties appeared, and the jury heretofore impannelled and sworn herein being called, came.

Jas. A. Lovejoy is recalled & further examined as a witness for defendant.
Richard F. Wilson sworn & " " "
Sumner W. Farnham " " " "
33 And here both parties rest their case.

C. K. Davis, esqr., sums up for defendant.

Henry H. Heyden, esq., sums up for plaintiffs.

Charge is given the jury by the court, and they retire in charge of an officer, duly sworn and qualified to attend them, to consider of their verdict.

United States circuit court for the district of Minnesota.

Term minutes December term, A. D. 1873, *December* 11, 1873.

CARROLL C. SPAFFORD & DE WITT C. CLARK, copartners, doing business under the firm-name of Spafford & Clark,
vs.
JAMES A. LOVEJOY, IMPLEADED WITH JOHN B. Shaw, and before impleaded with S. W. Farnham, late partners, as J. B. Shaw & Co.

The parties, by their attorneys, being present in court, the jury heretofore sworn and impannelled herein, being returned into court, say they find a verdict for the plaintiffs and assess their damages at the sum of six thousand three hundred and twenty-nine dollars and two cents.

Whereupon the defendant, by his attorney, gave notice of a
34 motion for a new trial, and asked for a stay of proceedings for twenty days, and that he have that time to prepare a bill of exceptions.

United States circuit court for the district of Minnesota.

Term minutes December term, A. D. 1873, March 2, 1874.

CARROLL C. SPAFFORD ET AL.
vs.
JAMES A. LOVEJOY, IMPLEADED, &C.

The motion for a new trial heretofore noticed in this cause coming on to be heard, was argued by Wm. Lochren, esqr., on behalf of the motion, and by Geo. L. Otis, esqr., in opposition thereto, and submitted to the court, and by the court held under advisement.

United States circuit court for the district of Minnesota.

Term minutes June term, A. D. 1874, June 17, A. D. 1874.

CARROLL C. SPAFFORD AND DE WITT C. Clark copartners as Spafford & Clark,
vs.
JAMES A. LOVEJOY, IMPLEADED WITH JOHN B. Shaw, and before impleaded with Sumner W. Farnham.

In this case, which was tried before a jury at the last term of
35 this court, who rendered a verdict for the plaintiffs and assessed their damages at the sum of six thousand three hundred and twenty-nine dollars and two cents, and in which the defendant Lovejoy made a motion for a new trial, which was submitted to this court and held under advisement, the court being fully advised in the premises, it is by the court ordered that the said motion be, and the same is hereby, denied.

Whereupon it is by the court considered, ordered, and adjudged, that the plaintiffs do have and recover of and from the said defendant James A. Lovejoy the said sum of six thousand three hundred and twenty-nine dollars and two cents. with interest thereon from the 11th day of December, 1873, the date of said verdict, being the sum of two hundred and twenty-eight dollars and ninety cents, amounting to the sum of six thousand five hundred and fifty-seven dollars and ninety-two cents, besides their costs by them in and about their suit in this behalf expended to be taxed, and that the plaintiffs have execution therefor.

36 Judgment-record signed this 17th day of June, A. D. 1874.

H. E. MANN, *Clerk.*

Costs taxed at $177.45.
St. Paul, June 27, 1874.

H. E. MANN, *Clerk.*

(Indorsed:) United States circuit court, district of Minnesota. Carroll C. Spafford et al. vs. James A. Lovejoy, impleaded, &c. Judgment-roll. Filed June 23d, 1874. H. E. Mann, clerk.

37 United States circuit court, district of Minnesota.

CARROL C. SPAFFORD AND DE WITT C. CLARK, copartners, doing business under the firm-name of Spafford & Clark, plffs.,
against
J. B. SHAW AND JAMES A. LOVEJOY, IMPLEADED with Sumner W. Farnham, as late partners, under the firm-name of J. B. Shaw & Co., deft.

This cause came on for trial upon the amended complaint and the answer of the defendant Lovejoy, at a term of said court begun and holden at St. Paul, in said district, before the honorable Rensselaer R. Nelson, judge of said court, on the 8th day of December, 1873, and for the trial of the issue of fact in said action a jury was duly empanneled and sworn. The defendant Shaw was not served, and did not defend.

And the plaintiffs, to maintain the issues on their part, introduced testimony which tended to prove that the defendant Lovejoy
38 transacted business at St. Anthony, Minnesota, under the name of Farnham & Co., one Rufus Farnham being nominally a partner with him, but having no real interest in the business of Farnham & Co., and that the firm of J. B. Shaw & Co. was composed of the said J. B. Shaw and the said Lovejoy, under the firm-name of Farnham & Co.; and were engaged in the business of buying and selling lumber, and had and operated a lumber-yard at the city of Davenport, in the State of Iowa, under the firm-name of J. B. Shaw & Co.

To further maintain the issues on their part, the plaintiffs offered in evidence the written articles of copartnership hereinafter set forth, expressly excluding from such offer the contract of dissolution endorsed on the margin thereof, hereinafter set forth, and the defendant objected to the offer unless the said contract of dissolution was also put in evidence at the same time; and the court sustained the objection, and required the plaintiffs to read said articles of copartnership and said contract of dissolution so endorsed on the margin thereof together,
39 the court stating in connection with such ruling that the plaintiffs should not be prejudiced by the so reading of said papers together; to which ruling the plaintiffs then and there duly excepted; and thereupon the said articles and the said contract of dissolution were read to the jury together, the same being in the words and figures following, to wit:

Articles of agreement, made the 15th day of April, A. D. one thousand eight hundred and sixty-eight, between Farnham & Co., of St. Anthony, county of Hennepin, State of Minnesota, and Judson B. Shaw, of Davenport, Iowa.

The said parties have agreed severally and individually to become copartners together in the buying and selling of lumber, and do hereby promise to be governed by the following articles, namely:

ART. 1ST. The said business shall be carried on under the name of J. B. Shaw & Co.

ART. 2ND. The nature of the business shall be buying, selling, and general dealing in all kinds of lumber.

ART. 3D. The location of the yard shall be at the city of Davenport, Iowa.

ART. 4TH. The profits or losses in the business shall be shared as follows: Farnham & Co. three-fourths, and Judson B. Shaw one-fourth.

40 ART. 5TH. It shall be the duty of Judson B. Shaw to take charge of the yard, order stock, and transact the general business of the firm, at Davenport, giving his personal attention and devoting his time wholly to the interests of the concern. And it shall further be expected of both parties to this agreement that they will use their best skill, judgment, and discretion in promoting the profits of the business.

ART. 6TH. Neither of the above parties shall assume any pecuniary liability in the name of the firm for the accommodation of any other person without the written consent of the other parties, and Judson B. Shaw shall not use *in* his own name for the accommodation of any person, while a member of the firm, without the knowledge and consent of Farnham & Co.

ART. 7TH. It is agreed that per cent. shall be the rate of interest allowed either of said parties for the use of money loaned or stock furnished to the firm. And it shall be expected that a statement of the individual interest account of each party, as shown on the books, be rendered yearly.

ART. 8TH. An account of the joint stock and joint liabilities shall be taken on the first of January of each year, and at any other time when either of the parties, in writing, requests it.

41 ART. 9TH. In consideration of the services of Judson B. Shaw he shall receive a salary of fifteen hundred dollars per year, and shall not be allowed to draw more than that amount per year.

ART. 10TH. Neither party shall withdraw from the business of the concern any part of the net profits which may accrue to said business without the knowledge and written consent of the other party.

ART. 11TH. Said partnership shall date from the fifteenth day of April, one thousand eight hundred and sixty-eight, and continue until dissolved by mutual consent.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

J. B. SHAW. [SEAL.]
FARNHAM & CO. [SEAL.]

In presence of—
H. A. WOODMAN.

[5-ct. internal-rev. stamp.]

Said contract of dissolution was written in the margin of said articles, and was in the words and figures following, viz:

By mutual consent of the undersigned, the parties to the within agreement, the partnership thereby formed is wholly dissolved, except so far as may be necessary to continue the same for the formal liqui-

42 dation and settlement of the business thereof.

Dated this May 12th, 1870, Davenport, Iowa.

FARNHAM & CO. [SEAL.]
J. B. SHAW. [SEAL.]

Witness:
E. MACGREGOR.

De Witt C. Clark, one of the plaintiffs, was sworn on their behalf, and testified that he never saw the articles of partnership nor the agreement for dissolution until June, 1873, and the plaintiffs had no knowl-

edge of such dissolution until that time; that the plaintiffs, at and before the transactions in suit, lived and did business at Eau Claire, Wisconsin. Said witness Clark also testified to the copartnership of the plaintiffs as alleged in the complaint. The plaintiff Spafford was not a witness in the case, and gave no testimony.

To further maintain the issues on their part, the plaintiffs introduced the testimony of O. E. Angell, who testified that he first met the defendant Lovejoy in the summer of 1873, and did not know him before, and that he first became acquainted with J. B. Shaw when the lumber was sold for which the first draft mentioned in this complaint was given; that about September 20th, 1870, witness went by
43 steamboat from Eau Claire to Reed's Landing for the purpose of selling for plaintiffs the lumber for which the said draft was drawn; that he met Shaw on the boat for the first time, and sold the lumber to J. B. Shaw & Co.; that he never did business with said firm before.

Plaintiffs' counsel asked this witness: "What did Shaw say to you in these negotiations as to who composed the firm of J. B. Shaw & Co.?"

To which the defendant Lovejoy objected on the ground that the question was immaterial, and that the declaration of Shaw made at that time could not bind nor affect the defendant Lovejoy.

Plaintiffs' counsel thereupon stated that he did not offer said testimony to prove the copartnership of the defendants, but to show that the plaintiffs in the sale of the lumber gave credit to the firm of J. B. Shaw & Co.

The objection was overruled, and the defendant Lovejoy duly excepted; which exception was noted.

The witness answered: "Shaw said he was a member of the firm of J. B. Shaw & Co., and that Lovejoy, of Minneapolis, was a partner in that firm."

44 Plaintiffs' counsel then asked the witness whether on that occasion he made inquiry of persons at Reed's Landing as to who composed the firm of J. B. Shaw & Co., and what information he received on such subject from such persons.

To which the defendant Lovejoy objected on the same grounds as to the previous question.

Which objection was overruled, and the defendant Lovejoy duly excepted and his exception was noted.

The witness answered: "I made inquiry of a person at Reed's Landing who was acquainted with persons on the river, and he said the firm was Shaw and Lovejoy. I there closed out the sale to Shaw. He made the draft, accepted it, and turned it over to me. I was acting for Spafford & Clark." The witness stated that he first heard after this suit was commenced that J. B. Shaw & Co. had dissolved. Said witness also testified that he had lived at Eau Claire for seven years last past, and that at the time he made inquiries as to who composed said firm he also made inquiries of the same persons as to the responsibility of the firm J. B. Shaw & Co., and was informed that the defendant Lovejoy was perfectly good.

45 The plaintiffs, to further maintain the issues in their behalf called Ira Mead, the payee of the second draft set up in the complaint, whose testimony tended to prove that he was at Reed's Landing with a raft for sale at the time said transaction took place between Angel and Shaw. That he heard that Shaw had negotiations for the sale of this lumber. That he had heard of the firm of Shaw & Co. before, and that Shaw was not good; that he had heard that Shaw, of Daven-

port, and Lovejoy, and Farnham was the firm; heard so the year before from a young man named Clough, who had been a clerk in Davenport and was at Eau Claire on a visit; also had heard the same that season from his (Mead's) partner, Mr. McGaire.

Plaintiffs' counsel then asked the witness what Shaw said to him, on this occasion of the sale of the lumber, as to who composed the firm of J. B. Shaw & Co.

To which the defendant Lovejoy objected on the ground that the same was incompetent and immaterial, and that the declarations of Shaw made at that time could not bind the defendant Lovejoy.

Which objection was overruled, and the defendant Lovejoy
46 duly excepted and his exception was noted.

The witness answered: "Shaw said he was a member of the firm of J. B. Shaw & Co., and that Lovejoy, of Minneapolis, was a partner."

Plaintiffs' counsel then asked the witness whether at the time he sold the lumber he made inquiry of persons at Reed's Landing as to the responsibility of the firm of J. B. Shaw & Co., and what information he received from such persons on that subject.

To which the defendant Lovejoy objected on the same grounds as to the previous question; which objection was overruled.

The defendant Lovejoy duly excepted, and the exception was duly noted.

The witness answered: "I asked Judge Cady, who was there, and he said those men up at Minneapolis were good." The witness also stated, under the same objections, ruling, and exceptions, that pending the negotiation Shaw gave him a business-card of J. B. Shaw & Co., in one corner of which was the name of J. B. Shaw, and in the other the names of James A. Lovejoy and S. W. Farnham; that he had put the card away in his desk, but upon search made just before the trial he failed to
47 find it; that it was lost. The witness testified that he never saw Shaw before this transaction; that he saw Lovejoy for the first time in June, 1873, and that he don't know as he ever saw Farnham, and that this was the first business transaction he ever had with J. B. Shaw & Co. He also stated that he knew the firm of J. B. Shaw & Co. by reputation before the giving of the draft in suit, and that he heard after this suit was commenced, for the first time, that said firm had dissolved.

To further maintain the issues on their part, the plaintiffs recalled the plaintiff D. C. Clark, who said: "In the spring of 1870 I first heard who composed the firm of J. B. Shaw & Co." He was then asked by plaintiff's counsel, "State what you heard."

To which the defendant Lovejoy objected on the grounds that the same was immaterial and incompetent, unless it was shown that the plaintiffs had had dealings with J. B. Shaw & Co. prior to the dissolution.

Which objections were overruled, and the defendant Lovejoy excepted and his exception was noted.

48 The witness answered: "I think the firm of J. B. Shaw & Co. was known at Eau Claire."

The plaintiff's counsel then asked the witness: "Who by common report was known to constitute the firm?"

To which the defendant Lovejoy objected on the grounds that the same was incompetent and immaterial.

Which objections were overruled, and the defendant Lovejoy duly excepted and his exception was noted.

The witness answered: "J. B. Shaw and Farnham and Lovejoy were reputed to constitute that firm." The witness further stated that "prior to May 12, 1870, Mr. Wilson and Mr. Ingram spoke to me about this firm. I don't know as I ever heard any one else speak about it."

It appeared from the testimony that the plaintiffs and the witnesses Mead an Angell had never had any dealings with the firm of J. B. Shaw & Co. prior to the sale of the lumber at Reed's Landing, and that the drafts in suit were drawn at Reed's Landing by Shaw, and accepted there by him in the name of J. B. Shaw & Co. at the time they bear date. The only evidence to show knowledge or information to the plaintiffs Mead or Angell of the existence of said firm of J. B.
49 Shaw & Co., except as hereinabove stated in this bill of exceptions, was certain testimony of the plaintiff Clark, elicited upon cross-examination, as follows: "Prior to May, 1870, I heard Mr. Wilson and Mr. Ingraham speak of this firm and mention the partners. Wilson told me in April, 1870, at Eau Claire. It was at our bank. It came up by Shaw's being there and borrowing some money. Wilson introduced him."

The plaintiffs offered in evidence the drafts, with the acceptance and endorsement of Mead, mentioned in the complaint. To each of which the defendant Lovejoy objected upon the grounds that it appeared by the foregoing facts that he was not liable thereon; which objection was overruled.

The defendant Lovejoy objected to such ruling, and the exceptions were noted and the drafts, acceptances, and endorsements were read.

The plaintiffs rested, and the defendant Lovejoy was thereupon sworn as a witness on his own behalf, who testified that the firm of J. B. Shaw
& Co. was dissolved May 12th, 1870, at Davenport, and that he
50 thereupon notified all the persons whom the firm had done business with that the firm was dissolved; that he never heard of the transactions at Reed's Landing which resulted in the execution of the drafts in suit until February, 1872; that he never gave Shaw any authority for these transactions, or to accept the drafts, and never derived any benefit from the transaction. Said Lovejoy also testified that the firm of J. B. Shaw & Co. commenced business at Davenport April 16, 1868; they transacted a general lumber business.

John F. Barnard was sworn as a witness for the defense, who testified that he was in the planing-mill business at Davenport from a time long prior to May 12, 1870, until the present time; had business relations with all the lumber-dealers, and knew them all, and that he knew of the dissolution at the time it occurred.

Defendants' counsel then asked the witness whether or not it was generally known at Davenport at the time the firm was dissolved that such dissolution had taken place.

To which the plaintiffs objected on the ground that the same was incompetent and immaterial.

51 Which objections were sustained, and the defendant Lovejoy excepted and his exception was noted.

Defendants' counsel then asked the witness: "State whether or not it was generally known at this time along the river that this dissolution had taken place."

To which plaintiffs made the same objections as before, and the objections were sustained and an exception taken by defendant Lovejoy and noted.

Defendants' counsel then asked the witness: "Did you at or near the

time of the dissolution communicate the fact that it had occurred to any persons other than the plaintiffs; and, if so, to whom, and in what manner?"

To which the plaintiffs made the same objection as before; which objection was sustained, and an exception was taken and noted for the defendant Lovejoy.

Counsel for defendant Lovejoy stated in connection with the questions to the witness Barnard that he did not expect to prove actual notice of the dissolution to the plaintiffs, or to the persons who sold the lumber.

52 John C. Spetzler was thereupon sworn as a witness in behalf of the defendant, and testified that in May, 1870, he was in the employment of J. B. Shaw & Co., in their yard at Davenport, as salesman; that the business was conducted after the dissolution by Shaw in the name of J. B. Shaw.

The defendant proposed to prove by the witness that the dissolution, immediately upon its occurrence, was a matter of general repute and knowledge in the city of Davenport, where the firm did business, and that all lumber dealers in Davenport were there informed of it.

To which plaintiff objected on the grounds that the same was incompetent and immaterial; which objection was sustained. To which the defendant Lovejoy excepted, and his exception was noted.

Sumner W. Farnham, not a partner, was sworn on behalf of the defendant, and testified, that, in September, 1870, and before the transaction in question he visited Eau Claire in company with J. B. Shaw; was there two or three days, and called on the lumber dealers of that place. The witness was then asked whether on that occasion he

53 or Shaw gave any notice to the lumber dealers at Eau Claire of the dissolution of the firm of J. B. Shaw & Co. If so, to whom, and in what manner?

To which the plaintiffs objected, on the grounds that the same was incompetent and immaterial, unless the defendant proposes to prove actual notice to plaintiffs, or to those who sold the lumber, or notice by publication in a newspaper. The objection was sustained by the court, and the defendant Lovejoy excepted, and his exception was noted.

The defendant then offered to prove by this witness, that, while he and Shaw were at Eau Claire on this occasion, and before the sale of the rafts in question, the said Shaw, in the presence of the witness, notified all, or nearly all, of the lumber dealers in Eau Claire, where plaintiffs then lived and did business, and in the vicinity, that the firm of J. B. Shaw & Co. have dissolved, and that Farnham & Co. had sold out to Shaw.

To which the plaintiffs objected, on the grounds that the same was immaterial and incompetent unless the defendant proposes to

54 show actual notice to plaintiffs, or to those who sold the lumber; which objection was sustained, and the defendant Lovejoy excepted, and his exception was noted.

There was no testimony given to show where the firm of J. B. Shaw & Co. purchased their lumber, or derived their supplies, except the testimony of the defendant Lovejoy, who testified in this regard as follows, viz: J. B. Shaw & Co. commenced business in 1867. They transacted a general lumber business. About all the business they did was to sell the lumber we furnished from the falls. They may have bought some small strings of lumber elsewhere. Shaw did the business at Davenport. I think there was only one or two lots of lumber brought them at Davenport besides what was furnished from the falls during the partnership.

We used to buy some lumber at Davenport on exchange account, besides what we bought from dealers.

And on cross-examination the witness further testified: I won't swear that Shaw did not buy 700,000 feet of lumber of Robinson on the Wisconsin River while he was a member of the firm. He bought some small lots. He bought one or two. I won't swear there not
55 half a dozen. I only know of one or two. I don't know that this Robinson purchase was not one of them. I remember one little lot that came into the bay at Davenport. Don't remember of whom it was bought. It might have been one, two, or three strings. Don't know how much he bought. Don't know of whom he bought the other lots. I do not know of but one lot, by what Shaw and others said. I won't swear that he did not buy a lot of them; won't swear that he did not buy a lot of Joseph Goodrich.

There was no testimony of any transaction by this firm at Eau Claire or on the Chippewa River, or at Read's Landing, other than the aforesaid testimony of Lovejoy, excepting the transaction in question in this suit. There was no evidence that any notice of the dissolution of the firm of J. B. Shaw & Co. was ever published in any newspaper. It was proved that two daily newspapers were printed at Davenport at the time of said dissolution.

Richard Wilson was then sworn on behalf of the defendant, and
56 testified: I was agent for the Chippewa Lumber Company on Sept. 27, 1875. The lumber Angell sold was the lumber of Spafford & Clark. As the lumber was made it was marked Spafford & Clark, and turned over to them. When a raft was completed, Spafford came out, and I delivered the same into his possession. He took actual possession after. Angell acted as the agent of Spafford & Clark in the sale of this lumber. I made an arrangement with Spafford & Clark that they should advance money on the lumber, and then take it and sell it; and when they sold the same, they paid the Chippewa Lumber Company the excess of ten & $\frac{50}{100}$ dollars per thousand. I was the agent of the Chippewa Lumber Company, and Angell was the company.

Sumner W. Farnham, not the partner, was recalled in behalf of the defendant, and testified: I visited the office of the Chippewa Lumber Company at Eau Claire, about September 20, 1870, on the occasion of my visit to Eau Claire with Shaw, and I then conversed with the man in charge of the Chippewa Lumber Company, at the office of the
57 Chippewa Lumber Company.

The defendant's counsel then asked the witness, "Did you or Mr. Shaw, prior to the date of the sale of the lumber, give to the Chippewa Lumber Company notice of the dissolution of J. B. Shaw & Co.; &, if so when, where, and in what manner?"

To which the plaintiff objected, on the ground that *that* the same was incompetent and immaterial unless the defendant proposes to show actual notice to the plaintiffs or to the said Angell or the said Mead of the dissolution of said firm. The objection was sustained. The defendant Lovejoy excepted, and the exception was duly noted.

The court charged the jury as follows:

The facts in this case are in the main undisputed. The plaintiffs seek to hold the defendant, Lovejoy, for the payment of two acceptances of J. B. Shaw & Co. To establish his liability, plaintiffs must show that Lovejoy was a member of the firm of J. B. Shaw & Co., and was a joint promissor, or that, having ceased to be a member of the firm, he still remained liable for obligations made in the name of the firm, by reason of
58 failure to give proper notice of the dissolution of the firm to the

public. Had he been a member of the firm when the acceptances were given, there would be no doubt of his liability. It is material for you to decide whether credit on the sale of the lumber at Reed's was given to J. B. Shaw alone or to J. B. Shaw & Co. If to Shaw alone, then Lovejoy would not be bound. From 1868 to May 12, 1870, Lovejoy was a member of the firm of J. B. Shaw & Co. This is not disputed. It also appears that on May 12, 1870, the firm was dissolved. Plaintiffs claim, notwithstanding the dissolution, Lovejoy is liable, because the lumber was sold on the credit of the company, and no notice given them of any dissolution. If you find that the sale at Reed's was in fact made to the firm, and that the plaintiffs, in making such sale, gave the credit to the firm of J. B. Shaw & Co., and relied on such credit, then Lovejoy cannot escape liability unless he has given legal notice. Many interesting questions as to what is proper notice to persons who have not
59 been dealers with the firm which has dissolved have arisen in this case. It is not necessary for me to go to the extent of those authorities which hold that in cases of dissolution, in order to avoid liability on the part of retiring partners to strangers, that there must be actual notice or public notice by advertisement in a newspaper. I do not say that these are the only kinds of proper notice that might be given. In this case there is no evidence of any public notice, for private communications made to particular persons at the place where the firm did business or elsewhere is not sufficient notice to bind other persons.

There are two questions for you to decide:

First. Was there such a firm as J. B. Shaw & Co., and was Lovejoy a member thereof up to May 12, 1870? This is undisputed.

Second. Did plaintiffs or their assignees, as in the case of the Mead draft, have reasonable knowledge or information that the firm of J. B. Shaw & Co. still existed at the time the lumber was sold? Knowl-
60 edge obtained from public notoriety and from individuals who had knowledge thereof was sufficient to warrant the plaintiffs in such a belief. If the evidence warrants you in finding that Angell or Mead had reason to believe that the dissolution had taken place at the time of the sale, then the plaintiffs cannot recover. Now, has there been any actual notice or public notice? Without public notice or actual notice good faith makes Lovejoy responsible, and he cannot escape if the credit was given to the firm. Angell and Mead were in possession of the property. As to the arrangement with other parties as testified to, it is not material in this case One partner can bind the firm in a transaction for the benefit of the firm, and the other partners would be responsible for his acts. In this case J. B. Shaw accepted these drafts in the name of J. B. Shaw & Co.; and if the credit was given to the firm, and Lovejoy had omitted to do anything to relieve himself from liability, then he is still responsible.

To the following portion of this charge the defendant Lovejoy
61 duly excepted, and his exception was noted, viz:

"If you find that the sale at Reed's was in fact made to the firm, and that the plaintiffs, in making such sale, gave credit to the firm of J. B. Shaw & Co. and relied on such credit, then Lovejoy cannot escape liability, unless he has given legal notice of the dissolution of the firm."

The defendant Lovejoy also duly excepted, and his exception was noted, to the following portion of the charge:

"In this case there is no evidence of any public notice, for private communications made to particular persons at the place where the firm did business or elsewhere is not sufficient notice to bind other persons."

The defendant Lovejoy also excepted, and his exception was noted, to the following portion of the charge:

"Did the plaintiffs or their assignees, as in the case of the Mead draft, have reasonable knowledge or information that the firm of J. B. Shaw & Co. still existed at the time the lumber was sold? Knowledge obtained from public notoriety and from individuals who had knowledge thereof was sufficient to warrant the plaintiffs in such a belief."

62 The defendant, Lovejoy, requested the court to charge the jury as follows:

I. The evidence in this case shows that the firm of J. B. Shaw & Co. was dissolved, and that the defendant Lovejoy had withdrawn therefrom on the 12th day of May, 1870, more than four months before the lumber was purchased from plaintiffs or their assignees, and the bills of exchange in suit given and accepted.

II. That at the time said bills of exchange were given and excepted, said J. B. Shaw had no authority to accept the same in the name of the previous firm so as to bind the defendant Lovejoy by such acceptance.

III. The evidence shows that none of the persons selling lumber for which these acceptances were given had had any dealing with J. B. Shaw & Co. during its existence, and that they were not at the time said firm was dissolved entitled to any notice of the dissolution.

IV. When J. B. Shaw applied to purchase the lumber, and represented that he had authority as partner to bind the defendant

63 Lovejoy those having the lumber to sell were bound to inquire as to the fact whether he had such authority or not in the absence of previous dealings. And if the fact of the dissolution of the firm was so publicly and generally known that the jury believe that a reasonable inquiry by the persons selling the lumber would have disclosed the fact of the dissolution, and that they neglected to make any reasonable inquiry, the defendant Lovejoy is not bound.

V. If the jury find that the fact of the dissolution of the firm of J. B. Shaw & Co. was made known to the business men engaged in the same business as those who sold the lumber to Shaw in the town where they resided and did business, and was so communicated as to be likely to come to their knowledge, the jury may infer that fact if they believe it from the evidence and circumstances.

VI. That as the persons selling the lumber in this case had not had any dealings with the firm of J. B. Shaw & Co. during its existance, they were not justified in presuming that defendant Lovejoy was

64 a member of that firm on the statement of any one or two persons who are not shown to have ever had any dealing with that firm during its existence.

VII. That as to persons who had never dealt with the firm of J. B. Shaw & Co., the defendant Lovejoy on the dissolution of that firm, was not bound to give notice directly of such dissolution. Neither was it absolutely necessary that notice of the dissolution should have been published in any newspaper in order to protect Lovejoy against persons who had never dealt with the firm. The jury are at liberty to consider from the generality and extent to which knowledge of the fact of the dissolution had been spread, especially *especially* in the vicinity where the plaintiffs and their assignees lived and did business, and from the lapse of time occurring after the dissolution, whether notice of the dissolution had not reached the plaintiffs or their assignees, or would not have been ascertained upon such inquiry as they were reasonably bound to make.

VIII. If the jury believe that the purchase of lumber by Shaw

65 was made for his own benefit alone, and this was known to the sellers, or there were circumstances connected with the sale from which they ought to have known this, the defendant Lovejoy is not bound.

IX. That the fact that Shaw drew the acceptances in his own name as drawer is a circumstance which tended to show that the purchase was for his individual benefit, and that the draft on the face of it was for his own funds in the hands of the drawee.

In reference to such requests of the defendant, the court charged as asked in the first and the second, with the qualification that it was true if he had given legal notice of the dissolution of the firm, and eighth requests; but as to all the other requests and every of them the court said: "I have already stated to you all the law which I deem applicable to this case, and therefore decline to charge as requested by the defendant," and declined to give any of said requests except the first and second as above, and eighth, and the defendant, Lovejoy, duly excepted, and his exception was noted, to the refusal of the court to give each of the requests so refused severally.

66 The jury retired to consider their verdict, and afterwards came into court for further instructions, in response to which the court said: "The first proposition which I charged you was that there is no dispute that the partnership existed in 1868 and 1869, and that it was in fact dissolved May 12, 1870. So far as Lovejoy is concerned, unless he had done something to bring public or actual notice of the dissolution to these plaintiffs or their assignors, or had given public notice of the dissolution, he would continue liable, and cannot escape, if you are satisfied credit was given to the firm." To all that portion of the charge which follows after the words and figures "May 12, 1870," the defendant Lovejoy duly excepted, and his exception was noted.

The jury thereupon retired again to consider of their verdict, and returned a verdict in favor of the plaintiffs and against the defendant, Lovejoy, for the sum of six thousand three hundred and twenty-nine dollars and two cents. And because none of the aforesaid matters,

67 except said verdict, appear of record, the foregoing bill of exceptions, having been examined and found by the court to be conformable to the facts, is hereby allowed, signed, and sealed by me, the judge before whom the said trial was had.

Done at the said December term of said court.

R. R. NELSON. [SEAL.]

68 (Indorsed:) U. S. circuit court, district of Minnesota. Spafford & Clark vs. James A. Lovejoy et al., impleaded as J. B. Shaw & Co. Bill of exceptions. Filed January 29, 1874. H. E. Mann, clerk.

69 Know all men by these presents that we, James A. Lovejoy, Edward K. Smith, and Ashley C. Morrill, all of the county of Hennepin, and State of Minnesota, are held and firmly bound unto Carroll Spafford and De Witt C. Clark, copartners as Spafford & Clark, in the sum of fourteen thousand dollars, to be paid to the said Carroll C. Spafford and De Witt C. Clark, copartners as Spafford and Clark, their executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally *bind ourselves* and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 1st day of August, A. D. 1874.

Whereas the above-named James A. Lovejoy, of Hennepin County, Minnesota, hath prosecuted a writ of error to the Supreme Court of the

United States to reverse the judgment rendered by the circuit court of United States for the district of Minnesota on the 17th day of June, A. D. 1874, in a suit therein pending, wherein the said Carroll C. Spafford and De Witt C. Clark, copartners as Spafford & Clark, are plaintiffs, and the said James A. Lovejoy is defendant, impleaded with one J. B. Shaw, who were at first impleaded with Sumner W. Farnham, against said defendant for the sum of six thousand five hundred and fifty-seven dollars and ninety-two cents and costs of suit:

Now, therefore, the condition of this obligation is such that if
70 the above-named James A. Lovejoy shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

JAMES A. LOVEJOY. [SEAL.]
E. K. SMITH. [SEAL.]
A. C. MORRILL. [SEAL.]

Sealed and delivered in presence of—
WM. LOCHREN.

DISTRICT OF MINNESOTA,
County of Hennepin, ss:

Be it known that on this 1st day of August, A. D. 1874, before me personally came Edward K. Smith and Ashley C. Morrill, who, being severally sworn, each for himself doth say that he is one of the sureties named in the above obligation; that he is a resident of and freeholder in the State of Minnesota; and that he is worth the sum of fourteen thousand dollars over and above his debts and liabilities, and exclusive of his property which is exempt from execution.

A. C. MORRILL.
E. K. SMITH.

Subscribed and sworn to before me this 1st day of August, A. D. 1874.
[NOTARIAL SEAL.] WILLIAM LOCHREN.
Notary Public, Hennepin County, Minnesota.

71 (Indorsed:) United States circuit court, district of Minnesota. Carroll C. Spafford et al. vs. James A. Lovejoy, imp'd, &c. Bond on writ of error.

I hereby approve the within bond and the sureties thereon.
R. R. NELSON, *Judge.*

Filed August 10, 1874.
H. E. MANN, *Clerk.*

72 United States circuit court, district of Minnesota.

CARROLL C. SPAFFORD & DE WITT C. CLARK, copartners as Spafford & Clark,
vs.
JAMES A. LOVEJOY, IMPLEADED WITH J. B. Shaw, heretofore impleaded with Sumner W. Farnham.

Upon filing bond duly approved in this cause, and on motion of the defendant, ordered that a writ of error to remove this cause to the Supreme Court of the United States be, and the same is hereby, allowed.
R. R. NELSON, *Judge.*

73 (Indorsed:) United States circuit court, district of Minnesota. Carroll C. Spafford et al. vs. James A. Lovejoy imp'd, &c. Order allowing writ of error. Filed August 10, 1874. H. E. Mann, clerk.

74 United States circuit court, district of Minnesota.

CARROLL C. SPAFFORD AND DE WITT C. CLARK, copartners as Spafford & Clark,
vs.
JAMES A. LOVEJOY, IMPLEADED WITH JOHN B. SHAW, heretofore impleaded with Sumner W. Farnham.

To Carroll C. Spafford and DeWitt C. Clark, copartners as Spafford & Clark, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Minnesota, wherein James A. Lovejoy, impleaded with J. B. Shaw, who were before impleaded with Sumner W. Farnham, is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Rensselaer R. Nelson, district judge for the district of Minnesota, and one of the judges of said circuit court, this 5th day of August, A. D. 1874.

R. R. NELSON, *Judge.*

75 (Indorsed:)

A. 461. United States circuit court, district of Minnesota. Carroll C. Spafford et al. vs. James A. Lovejoy, imp'd, &c. Citation.

Due service of the within admitted at Saint Paul, in said district of Minnesota, this 10th day of Aug., A. D. 1874.

GEO. C. OTIS.
Atty. for Defts. in Error.

Filed August 10, 1874.

H. E. MANN, *Clerk.*

76 UNITED STATES OF AMERICA,
District of Minnesota ss:

I, Horatio E. Mann, clerk of the circuit court of the United States of America for the district of Minnesota, in the eighth circuit, do hereby certify that the foregoing pages, numbered from one to seventy-six inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Carroll C. Spafford and De Witt C. Clark, copartners as Spafford & Clark, vs. James A. Lovejoy, impleaded with J. B. Shaw, heretofore impleaded with Sumner W. Farnham, as the same remain of record and on file in my office as such clerk.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this second day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninty-ninth year.

[SEAL.] H. E. MANN, *Clerk.*

(Indorsement on cover:) No. 279. James A. Lovejoy, impleaded with J. B. Shaw, heretofore impleaded with Sumner W. Farnham, plaintiff in error, vs. Carroll C. Spafford and De Witt C. Clark, copartners as Spafford & Clark. Minnesota C. C. U. S. Filed 30th September, 1874.

C

SUREME COURT OF THE UNITED STATES.

No. 279.

JAMES A. LOVEJOY, *Plaintiff in Error,*

vs.

SPAFFORD & CLARK, *Defendants in Error.*

In Error to the Circuit Court of the United States for the District of Minnesota.

BRIEF OF PLAINTIFF IN ERROR.

F. R. E. CORNELL,
Counsel for Plaintiff in Error.

UNITED STATES OF AMERICA,
SUPREME COURT.

JAMES A. LOVEJOY, Impleaded with J. B. SHAW and Heretofore Impleaded with SUMNER W. FARNHAM, Plaintiff in Error,

against

CARROLL C. SPAFFORD AND DEWITT C. CLARK, PARTNERS AS SPAFFORD & CLARK, Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF CASE.

The issues are on the amended complaint of plaintiffs, (defendants in error), and the answer thereto of the defendant Lovejoy, (plaintiff in error). *Printed Record, pages 7 to 10.*

The defendant Shaw was not served and did not defend. *Record, p. 13, f. 37.*

The amended complaint alleges that at the dates of the drawing, acceptance and dishonor of the bills of exchange declared on, the defendant Lovejoy, then doing business at St. Anthony, Minnesota, with one Rufus Farnham as a nominal partner, under the firm name of Farnham & Co., was by that firm name a partner with J. B. Shaw, under the firm name of J. B. Shaw & Co., in the lumber business at Davenport, Iowa.

Two bills of exchange are declared upon (in separate counts), alleged to have been drawn by J. B. Shaw at Reeds Landing, Minnesota, on the 27th day of September, 1870, upon J. B. Shaw & Co., Davenport, Iowa, payable at a bank in Davenport, one for the sum of $4,018.55, payable in twenty days to the order of plaintiffs; the other for the sum of $1,166.45 payable in thirty days to the order of Ira Mead. It is alleged that the bills were accepted by J. B. Shaw & Co., and that the bills were dishonored, protested, and due notice given to defendants. *Record, pages 7 and 8.*

The answer of defendant Lovejoy contains a special and general traverse of all the allegations above referred to, of the amended complaint. *Record, p. 9.*

It appeared on the trial that defendant Lovejoy had transacted business at St. Anthony, Minnesota, under the name of Farnham & Co., one Rufus Farnham being a nominal partner. *Record, p. 13, f. 38.* Also that defendant Lovejoy, by the name of Farnham & Co., on the 15th day of April, 1868, by written articles formed a partnership with J. B. Shaw, for dealing in lumber at Davenport, Iowa, under the firm name of J. B. Shaw & Co, and that on May 12th, 1870 this partnership was dissolved by written agreement endorsed on the margin of the original articles. *Record, pages 14 and 15, and folios* 50, 63 and 66. It appeared that the consideration for the bills was two rafts of lumber, one sold by the witness Angell, and the other by the witness Mead, to J. B. Shaw, on or about Sept. 27, 1870, at Reed's Landing. *Record, page 15.* It appeared that neither Angell nor Mead had ever met Shaw before, and that neither of them knew Lovejoy, but that Mead had previously heard from *two* persons that there was such a firm as J. B. Shaw & Co. at Davenport, and that Farnham & Lovejoy were partners. That they inquired of one person at Reed's, who said the firm was Shaw and Lovejoy. They had no further information except the representations of Shaw. *Record, pages 15 and 16.*

The bills were *accepted* by Shaw in the name of the firm, at the time they were made and delivered. *Record, page 15, folio 44.*

It appeared that Angell did business at Eau Claire, Wisconsin, under the name of The Chippewa Lumber Co. That as he manufactured lumber the plaintiffs made him loans or advances on it, receiving a form of delivery of the lumber, which was, however, retained and sold by Angell, who had the excess realized over the advances. *Record, page* 19, *folio* 56.

It further appeared that the firm of J. B. Shaw & Co commenced business at Davenport, April 16 1868, and was dissolved May 12, 1870, and that Lovejoy thereupon notified all persons with whom the firm had done business, of the dissolution, and that Lovejoy had never heard of the purchase of the lumber by Shaw, nor of the drafts, until February, 1872, and had never given Shaw any authority to purchase the lumber, or to accept the drafts, and had never received any benefit from the transaction.

The case therefore presented three questions for determination. They may be stated as follows:

1. Whether Angell and Mead sold the lumber to the firm of J. B. Shaw & Co., or to J. B. Shaw individually.

2. Whether the defendant, Lovejoy, had given sufficient notice of the dissolution of the firm of J. B. Shaw & Co., in view of the time which had elapsed between the dissolution and sale of the lumber, to protect himself from liability to Angell, Mead, or the plaintiffs.

3. Whether Angell, Mead or plaintiffs. had at the time of the sale of the lumber and acceptance of the bills, such knowledge of Lovejoy's previous connection with the firm of J. B. Shaw & Co. as entitled either of them to rely on his responsibility.

II.

ASSIGNMENT OF ERRORS.

1st. The Circuit Court erred in overruling the defendants' objection to the following question to the witness Angell:

"What did Shaw say to you in these negotiations as to who composed the firm of J. B. Shaw & Co? *Record, p.* 15, *fol.* 43.

2d. The Circuit Court erred in overruling the defendants' objection to the question to the witness Angell, "Whether on that occasion he made inquiry of persons at Reed's Landing as to who composed the firm of J. B. Shaw & Co., and what information he received on such subject from such persons." *Record, page* 15, *folio* 44.

3d. The Circuit Court erred in overruling the defendant s objection to the question asked of the witness Mead as to "what Shaw said to him on this occasion of the sale of the lumber, as to who composed the firm of J. B. Shaw & Co." *Record, page* 16, *folio* 45.

4th. The Circuit Court erred in overruling the defendants' objection to the question asked of the witness Mead, "Whether at the time he sold the lumber, he made inquiry of persons at Reed's Landing, as to the responsibility of the firm of J. B. Shaw & Co., and what information he received from such persons on that subject." *Record, page* 16, *folio* 46.

5th. The Circuit Court erred in overruling defendants' objection to the question asked of the witness Clark, as to what he had heard in the spring of 1870, concerning who composed the firm of J. B. Shaw & Co. *Record, page* 16, *folio* 47.

6th. The Circuit Court erred in overruling defendants' objection to the question asked the witness Clark: "Who, by common report, was known to const tute the firm?" *Record, page* 16, *folio* 48.

7th. The Circuit Court erred in overruling defendants' objections to the drafts and endorsements as evidence. *Record, page* 17, *folio* 49.

8th. The Circuit Court erred in sustaining the plaintiffs' objection to the question asked of the witness Barnard, "Whether or not it was generally known at Davenport, at the time the firm was dissolved, that such dissolution had taken place." *Record, page* 17, *folio* 50.

9th. The Circuit Court erred in sustaining the plaintiffs' objection to the question asked of the witness Barnard, "State whether or not it was generally known at this time, along the

river, that the dissolution had taken place." *Record, p.* 17, *f.* 51.

10th. The Circuit Court erred in sustaining plaintiffs' objection to the question asked of the witness Barnard: "Did you, at or near the time of the dissolution, communicate the fact that it had occurred, to any persons other than the plaintiffs, and, if so, to whom and in what manner?" *Record, pages* 17 *and* 18, *folio* 51.

11th. The Circuit Court erred in sustaining the plaintiffs' objection to defendants' offer to prove by the witness Spetzler, "that the dissolution, immediately upon its occurrence, was a matter of general repute and knowledge in the city of Davenport, where the firm did business, and that all lumber dealers in Davenport were then aware of it." *Record, page* 18, *fol.* 52.

12th. The Circuit Court erred in sustaining the plaintiffs' objection to the question asked of the witness Farnham, whether in September, 1870, before the sale of the lumber, he or Shaw gave any notice to the lumber dealers at Eau Claire, of the dissolution of the firm of J. B. Shaw & Co. If so, to whom and in what manner?" *Record, page* 18, *folio* 53.

13th. The Circuit Court erred in sustaining plaintiffs' objection to defendants' offer to prove by the witness Farnham, that while he and Shaw were at Eau Claire, in September, 1870, and before the sale of the rafts in question, the said Shaw, in the presence of the witness, notified all or nearly all of the lumber dealers in Eau Claire, where plaintiffs then lived and did business, and in the vicinity, that the firm of J. B. Shaw & Co. had dissolved, and that Farnham & Co. had sold out to Shaw. *Record, page* 18, *folio* 53.

14th. That the Circuit Court erred in sustaining the objection of plaintiffs to the question asked of the witness Farnham "Did you or Mr. Shaw, prior to the date of the sale of the lumber, give to the Chippewa Lumber Company notice of the dissolution of J. B. Shaw & Co; and, if so when, where and in what manner?" *Record, page* 19, *folio* 57.

15th. The Circuit Court erred in charging the jury as follows: "If you find that the sale at Reed's was in fact made to the firm, and that the plaintiffs, in making such sale, gave

credit to the firm of J. B. Shaw & Co., and relied on such credit, then Lovejoy cannot escape liability, unless he has given legal notice of the dissolution of the firm." *Record, page* 20, *folios* 58 *and* 61.

16th. The Circuit Court erred in charging the jury as follows; "In this case there is no evidence of any public notice; for private communications made to particular persons at the place where the firm did business, or elsewhere, is not sufficient notice to bind other persons." *Record, page* 20, *folios* 59 *and* 61.

15th. The Circuit Court erred in charging the jury as follows: "Did the plaintiffs, or their assignors, as in the case of the Mead draft, have reasonable knowledge or information that the firm of J. B. Shaw & Co. still existed at the time the lumber was sold? Knowledge obtained from public notoriety and from individuals who had knowledge thereof, was sufficient to warrant the plaintiffs in such a belief." *Reoord, pages* 19 *and* 20, *folios* 59, 60 *and* 61.

18th. The Circuit Court erred in refusing to charge the defendants' third request: "The evidence shows that none of the persons selling lumber, for which these acceptances were given, had had any dealing with J. B. Shaw & Co. during its existence, and that they were not at the time said firm was dissolved, entitled to any notice of the dissolution." *Record, pages* 21 *and* 22, *folios* 62 *and* 65.

19th. The Circuit Court erred in refusing to charge the defendants' fourth request: "When J. B. Shaw applied to purchase the lumber, and represented that he had authority as partner, to bind the defendant Lovejoy, those having the lumber to sell were bound to inquire as to the fact whether he had such authority or not, in the absence of previous dealings. And if the fact of the dissolution of the firm was so publicly and generally known that the jury believe that a reasonable inquiry by the persons selling the lumber would have disclosed the fact of the dissolution, and that they neglected to make any reasonable inquiry, the defendant Lovejoy is not bound. *Record, page* 21, *folio* 63.

20th. The Circuit Court erred in refusing to charge the defendants' sixth request: "That, as the persons selling the lumber in this case had not had any dealings with the firm of J. B. Shaw & Co. during its existence, they were not justified in presuming that defendant Lovejoy was a member of that firm, on the statement of any one or two persons who are not shown to have ever had any dealings with that firm during its existence." *Record, page* 21, *folio* 64.

21st. The Circuit Court erred in refusing to charge the defendants' seventh request: "That as to persons who had never dealt with the firm of J. B. Shaw & Co., the defendant Lovejoy, on the dissolution of that firm, was not bound to give notice, directly, of such dissolution. Neither was it absolutely necessary that notice of the dissolution should have been published in any newspaper, in order to protect Lovejoy against persons who had never dealt with the firm. The jury are at liberty to consider, from the generality and extent to which knowledge of the fact of the dissolution had been spread, especially in the vicinity where the plaintiffs and their assignors lived and did business, and from the lapse of time occurring after the dissolution, whether notice of the dissolution had not reached the plaintiffs or their assignors, or would not have been ascertained upon such inquiry as they were reasonably bound to make. *Record, page* 21, *folio* 64.

22d. The Circuit Court erred in refusing to charge the defendants' ninth request; "That the fact that Shaw drew the acceptances in his own name, as drawer, is a circumstance which tended to show that the purchase was for his individual benefit, and that the draft on the face of it was for his own funds in the hands of the drawee. *Record, page* 22, *folio* 65.

23d. The Circuit Court erred in charging the jury as follows: "So far as Lovejoy is concerned, unless he had done something to bring public or actual notice of the dissolution to these plaintiffs or their assignors, or had given public notice of the dissolution, he would continue liable, and cannot escape if you are satisfied credit was given to the firm." *Record, page* 22, *folio* 66.

III.

ARGUMENT, POINTS AND AUTHORITIES.

Preliminary to observations upon the specific errors assigned, we deem it proper to advert very briefly to the *principles* upon which Lovejoy could be held liable after the dissolution of the firm of J. B. Shaw and Co. for contracts made by Shaw in the name of the firm.

A partner is liable for contracts made during the existence of the firm, by his co-partner in the name of the firm, upon two distinct grounds, resting on different reasons and principles.

First. As being a constituent member of the firm; having a share in the profits of the contract, and being in fact directly interested in and a party to it.

On this ground, not only open, ostensible partners are holden, but also secret or dormant partners when discovered. And on precisely the same principle, where an agent contracts in his own name for the benefit of a secret principal, the latter will be liable if discovered.

But where a partnership has been dissolved, a retiring partner cannot be holden on this *first* ground. He is no longer a constituent member of the firm, and has no interest in the contract.

Second. Because each partner is in law *the agent* of the partnership, and of *all the other partners*, in the business of the partnership, and is so *held out* to the world by all the other *ostensible* partners.

On this ground not only are all the *ostensible* partners holden, but so would also be one who, though not a partner in fact, should knowingly allow his name to appear as a partner.

It is therefore only on this *second* ground—the *implied* AGENCY of each partner, for the firm and the other ostensible partners, held out to the world while the partnership exists—that *after* the dissolution of the firm, its former ostensible members may be held liable for each others acts and contracts within the apparent scope of such former agency, with persons

who have a right to rely on the presumption that such agency continues.

Hence, a secret or dormant partner may withdraw at any time, without notice, and without liability for contracts *afterwards* made in the name of the firm.

Collyer on Part. § 536.

In this aspect of Partnership, the power of a partner to bind his co-partners is precisely the power of a general agent. And the law of Principal and Agent applies exactly.

Dunlaps Paley's Agency, 161, 162, 163, note 3.

The dissolution of the partnership is a revocation of the agency. It ends the power. But the necessity for *notice* is the same as in the case of other general agents, and is stated in *Dunlaps Paley's Agency*, 188, as follows. "In general the credit arising from ostensible employment continues, at least with regard to those who have been accustomed to deal upon the faith of that employment until they have *notice* of its being at an end; *or till its termination is notorious.*"

The reason for the rule is that innocent persons may not suffer, when the relation of principal and agent, or partnership, long known to exist, is suddenly and secretly ended.

The rule in the case of a partnership, or a general agency, is exactly the same. One who has dealt with the firm or agent, or who *knows* of their openly transacting business in either capacity, while the relation existed and was acknowledged, and who has no notice that the relation has ceased, nor of any fact that should put him on inquiry, may assume that the relation continues; and the former partner or principal will be liable to him for precisely the same reason: "That where one of two innocent persons must suffer, he shall suffer who by his confidence, or silence, or conduct, has misled the other."

Story on Agency, § 470.
Collyer on Part., § 530.
Dunlaps Paley's Ag., 161.
Parsons on Part., 411.

But *who* is entitled to rely on such previous relation? Reason and natural justice indicate the answer, and in this answer the law must concur, that such persons *only* are entitled so to rely as had previous dealings with the firm or agent, or had such *knowledge* of the relation, from dealings had within their observation, as to justify them in assuming its existence and continuance. In short, such knowledge as a prudent business man would, in good faith, ordinarily rely upon in business transactions.

But a person who knew nothing about a firm or agency, which had transacted no business in his vicinity, even if he had heard it mentioned before by one or two casual persons who had no particular knowledge of or dealings with it, can not be in a position which would *justify* him in assuming the existence or the continuance of such relation. It has never been held out to him, and it is a case of his own confidence and folly, if he trusts where he is bound to inquire and inform himself with certainty.

The following paragraph from Mr. Justice Story's work on Agency sets forth the law on this point:

"Unless the ostensible partner who has retired from the firm "suffers his name still to appear as one of the firm, so as to "mislead the public, (as by its being stated and still remaining "in the firm name) he will not be liable to mere strangers who "have no knowledge of the persons who compose the firm, for "the future debts and liabilities of the firm, notwithstanding "his omission to give public notice of his retirement; for it "cannot be truly said in such cases that any credit is given to "the retiring partner by such strangers. Each new creditor is "bound to inquire who are the parties interested at the time "in the firm, if he would be safe in his credit and dealings "with them."

Story on Part., § 160.
Parsons on Part., 412, 413.
And see *Carter vs. Whalley*, 1 *Barn. and Ad.* 11.

The duty of *inquiry* rests upon such new customer, and "the

"general doctrine is that whatever puts a party on inquiry "amounts in judgment of law to notice, provided the inquiry "becomes a duty, as in the cases of purcharers and creditors, "and would lead to the knowledge of the requisite facts, by "the exercise of ordinary diligence and understanding.

4 *Kent's Com.*, 179 (marg.)

POINT I.

The first and 3rd errors assigned may be considered together. The court erred in overruling defendant's objections to the questions asked by plaintiffs' counsel of the witnesses Angell and Mead, respecting what was said to them severally by Shaw in the negotiations for the sale of the lumber, as to who composed the firm of J. B. Shaw & Co.

The evidence was incompetent; because no statement of Shaw could bind Lovejoy.

Collyer. on Part. § 776, *and notes.*
McPherson vs. Rathbone, 7 *Wend.* 216.

It was immaterial for the purpose for which it was offered—to show that the sale of the lumber was to J. B. Shaw & Co. or on their credit:

a. That could properly be shown only by showing the *terms of the sale throughout*, whence it would appear on whose credit the sale was made.

b. The statement of Shaw as to who composed the firm, did not tend to show that the sale was made to that firm. If the sale was made to Shaw individually, and paid for by his drafts on the firm, though the firm was known to have no interest in the sale, a statement respecting the drawees, and as to who they were, (being strangers to the vendors) would be natural. It would tend to prove nothing; but would be likely to mislead the jury.

POINT II.

The 2nd and 4th errors assigned are similar. The court erred in overruling the defendant's objections to the questions

asked of the witnesses Angell and Mead, as to whether on the occasion of the sale of the lumber they made inquiry of persons at Reeds Landing, as to who composed the firm of J. B. Shaw & Co., and what information they received from such persons.

The evidence was manifestly incompetent. None of the persons inquired of had any power by their statements to bind the defendant Lovejoy. The vendors could only trust at their own risk to such information.

It was immaterial, Angell and Mead, *before* the negotiation commenced, were either in a situation in which they might make sales to the firm of J. B. Shaw & Co., and assume that Lovejoy was a partner, or they were not in that situation. If they *were* in such situation the inquiries were not material, and could not strengthen their rights; if they *were not* in such situation, nothing that could be said by "Judge" Cady or any other person at Reed's Landing, could affect Lovejoy. If they trusted to such information, it was their confidence and at their risk. The evidence was improper and tended to the prejudice of defendant Lovejoy.

POINT III.

The 5th and 6th errors assigned may be considered together. The Court erred in overruling the defendant's objections to the questions asked of the witness Clark, as to what he had heard in the Spring of 1870, concerning who composed J. B. Shaw & Co, and "who by common report was known to constitute the firm."

The questions were incompent and immaterial for reasons already urged, and because there was no basis for the last question. Clark's testimony was that he had heard but two persons speak of the matter—Ingram and Wilson—(*Record page* 17, *fols.* 48 and 49). This would not make a common report. There was no evidence that J. B. Shaw & Co. ever had done any business at Eau Claire, or that Ingram or Wilson had any knowledge of the firm or its business. Nor was there any pretence that even this matter was communicated to Angell or Mead, who sold the lumber.

POINT IV.

The Court erred in overruling the defendants' objection to the reception of the bills of exchange, (or drafts) and the endorsements thereon, in evidence. There was nothing in the case that tended to show any liability thereon on the part of defendant Lovejoy.

The making or acceptance of *negotiable paper*, in the name of a firm, by one of the partners after dissolution, stands on a different footing from purchases by him in the name of the firm from one who has a right to presume its continuance.

The *power* to accept bills or sign notes in the firm name is absolutely ended by the dissolution.

Collyer on Part., § 541, *et seq.*
Parsons on Part., 391.

So that the retiring partners cannot be held upon a bill or note, however they might be liable on the transaction which was the consideration for it.

POINT V.

The errors assigned, numbered 8th to 13th inclusive, may be considered together. The questions and offers of proof ruled out by the Court, would have tended to show very general public notice of the dissolution at Davenport, and other places along the river, and at Eau Claire.

In connection with the testimony of the defendant Lovejoy, (fol. 50), that he notified all persons with whom the firm had done business, that the firm was dissolved, the questions asked of the witnesses Barnard and Spetzler, as to the extent of the knowledge of the dissolution at Davenport, and along the river, called for evidence which would be corroborative and competent. The questions asked of the witness Farnham, as to notice given by himself and Shaw at Eau Claire, (fols. 53, 54), called for answers which would tend to show general and public notice given in that vicinity, and were therefore competent.

The evidence offered was entirely different from an inquiry into the extent of an *unauthorized rumor*, where no notice was ever given, which was held incompetent in *Pitcher vs. Barrows*,

17, *Pick.*, 365, (although that was a case where the plaintiff had previous dealings with the firm); but notoriety or general knowledge resulting from notices and acts of the parties, are always competent.

Goddard vs. Pratt, 16, *Pick.* 434.
Holdane vs. Butterfield, 5, *Bosw.*, 1.

Such evidence might tend to show very general notice, proper to be considered by the jury, from which to presume knowledge on the part of the plaintiffs or their assignors, even though the notice could not be traced clearly to them.

Jenkins vs. Blizzard, 1, *Starkie*, 418.
Dolman vs. Orchard, 2, *Carr & Payne*, 104.
White vs. Murphy, 3, *Richardson*, 369.
Martin vs. Walton, 1, *McCord*, 16.
Johnson vs. Totten, 3, *Cal.* 347.
Collyer on Part., § 533.

Point VI.

In the 14th error assigned, the Court erred in sustaining the plaintiffs' objection to the question asked of the witness Farnham; "Did you or Mr. Shaw, prior to the date of the sale fo the lumber, give to the Chippewa Lumber Company notice of the dissolution of J. B. Shaw & Co.? If so, when, where, and in what manner." *Record, page* 19, *folio* 57.

The witness Wilson had just before sworn that he was the agent of The Chippewa Lumber Company, and that *Angell was the company, folio* 56. In other words, Angell was the proprietor of the concern, and was doing business under the name of the Chippewa Lumber Company.

The question was competent and material. The reservation in the objection respecting "actual" notice, does not save it. If the *actual notice* mentioned did not mean *personal* notice, it was meaningless, and was disposed of by the very language of the question itself. Angell being the Chippewa Lumber Company, the notice inquired of, given to that Company, was notice to him.

The witness might have answered that Shaw, in his presence

gave notice to The Chippewa Lumber Company, by notifying the person in charge of its business at its office; or that he handed such person a written or printed notice addressed to such Company; or posted up such notice conspicuously in the office of said Company.

Neither of these would be personal notice to Angell, but either would be competent to go to the jury as evidence from which they might, if circumstances warranted, infer notice.

And if the most favorable answer which could have been given to the question would have been proper to be considered by the jury, its exclusion was error, and prejudiced the defendant.

Even where actual notice is essential, that may be inferred by the jury from circumstances. As by marking the goods by the plaintiff to one of the partners—the reception of a newspaper containing a notice of the dissolution—changes in the sign, &c.

Little vs. Clark, 36, *Penn. St.*, 114.
Hutchins vs. Bank of Tennessee, 8, *Humph*, 418.
Johnson vs. Totten, 3, *Cal.* 347.

"Where there is a spark of evidence, the question must be "submitted to the jury as the legitimate triers of it."

Per Gibson Ch. J., in

Bank of Pittsburgh vs. Whitehead, 10, *Watts*, 397.

Point VII.

The Court erred in charging the jury: "If you find that the "sale was in fact made to the firm, and that the plaintiffs in "making such sale gave credit to the firm of J. B. Shaw & Co., "and relied on such credit, then Lovejoy cannot escape lia- "bility, unless he has given legal notice of the dissolution of "the firm." 15*th error assigned.*

Without repeating our previous argument, it is enough to say that the evidence shows clearly that the owners of the lumber, never having had dealings with the firm of J. B. Shaw

& Co., nor any knowledge arising from its dealings or operations, of its members, while it existed, *were not entitled to assume* that Lovejoy, or any other particular person was a member of it, nor to make any sale relying on his liability.

Parsons on Part., 413.
Story on Part., § 160.

The charge, as applied to the facts, was erroneous.

POINT VIII.

The Court erred in charging the jury: "In this case there "is no evidence of any public notice, for private communica- "tions made to particular persons at the place where the firm "did business, or elsewhere, is not sufficient notice to bind "other persons." *16th error assigned.*

Public notice may consist of any notice, acts or circumstances tending to bring before the public knowledge of the fact. Publication of a notice in a newspaper, or by placards, or handbills; or a change of sign, and in the name in which the business is openly transacted at the place of business, would all, or any of them, tend to bring the fact to the knowledge of the public. So would notice given directly to parties with whom the firm had dealings, and persons in the same line of business. It is matter of every day experience that general information spreads from all these sources. Whether the notice given in any case is sufficient, in view of shortness or length of time, and other circumstances, is matter of fact for the jury to determine in each case, under proper instructions.

Collyer on Part., § 534.

There was *some* evidence of public notice in this case, for the testimony of the witness Spetzler, (*Record, page* 18, *fol.* 52) showed that after the dissolution the business was conducted at the yard in Davenport, by Shaw *in his own name;* and Lovejoy testified that he had given notice to all persons with whom the firm had dealt. (*Fol.* 50.) In view of the lapse of four and one half months between the dissolution and the sale of the lumber, the matter should not have been taken from the jury.

Considered with reference to the evidence given, the statement that "private communications made to particular persons where the firm did business, or elsewhere, is not sufficient notice to bind other persons," is too broad. Such communications are not confidential, but from their nature are expected to be repeated and communicated; and circumstances connected with considerable lapse of time, may admit of a presumption that the information has become public through such notices as well as in any other way.

McIver vs. Humble, 16, *East.*, 169.

POINT IX.

Respecting the 17th error assigned: The Court erred in charging the jury: "Did the plaintiffs or their assignors, as in the case of the Mead draft, have reasonable knowledge or information that the firm of J. B. Shaw & Co. still existed at the time the lumber was sold? Knowledge obtained from public notoriety, and from individuals who had knowledge thereof, was sufficient to warrant the plaintiffs in such a belief.'

This instruction was not warranted by the evidence, and therefore tended to mislead. There was no evidence that plaintiffs or the vendors of the lumber had any knowledge of the firm from *general notoriety*, nor from any person who had any knowledge of the firm. The instruction assumes that there was some such evidence for the jury to consider.

POINT X.

Respecting the 18th, 19th and 20th errors assigned, the Court erred in refusing to instruct the jury as asked in the requests therein set forth.

The paragraph we have quoted from *Story on Partnership*, § 160, as applied to the evidence in the case, fully sustains the requests.

POINT XI.

The Court erred in refusing to charge the defendants' ninth request, "That the fact that Shaw drew the acceptance in his own name as drawer, is *a circumstance* which tended to show

that the purchase was for his individual benefit, and that the draft, on the face of it, was for his own funds in the hands of the drawee." *22d error assigned.*

Whether the lumber was sold to Shaw individually or upon the credit of the firm, was the only question which was finally submitted by the Court to the jury for their consideration.

If the payment was provided for by a draft purporting to be made upon Shaw's individual funds in the hands of another, (individual or firm), it would be a circumstance tending to show that the sale was to himself, and the receiving of such a draft by the venders would be *some* evidence that they so understood it.

"A bill of exchange *imports* that a debt is due from the drawee to the drawer, which is assigned to the payee of the bill, and, if the drawee accepts, it is an acknowledgment on his part *that he has funds of the drawer* in his hands to the amount of the bill.

Per Bronson J. in Griffith vs. Reed, 21 *Wend*, 504.

The *presumption* arising from the bills was that the lumber was to be paid for by Shaw's individual funds in the hands of the drawees; and the jury should have been allowed to consider that circumstance, and give it such weight as it might be entitled to, in connection with the other evidence in the case. The instruction requested should have been given.

Point XII.

The Court erred in instructing the jury: "So far as Lovejoy is concerned, unless he had done something to bring public or actual notice of the dissolution to these plaintiffs or their assignors, or had given public notice of the dissolution, he would continue liable, and cannot escape, if you are satisfied credit was given to the firm."

The question of notice had been previously taken from the jury by the Court in that portion of its charge mentioned in Point 8. The instruction last quoted, therefore, amounted to a direction to the jury to find for the plaintiff, if they found that the sale was made on the credit of the firm.

This instruction was not given in connection with the general charge, but separately and standing by itself, upon the coming in of the jury for instructions, after they had once retired. It amounted to a direction to the jury that Lovejoy was liable, irrespective of any knowledge on the part of the vendors of the lumber (or plaintiffs) at the time the lumber was sold or previous, of who composed, or had ever composed the firm, in default of public notice, or actual notice to those parties having been given of the dissolution.

The statement of the law of the case to the jury was substantially this: That as Lovejoy had been up to May 12, 1870, a partner with J. B. Shaw, under the firm name of J. B. Shaw & Co., and upon the dissolution of the firm at that date, had given no public notice of such dissolution, a stranger who, on September 27, 1870, knowing nothing previously of the firm, should in any way be led to believe that it existed, and so believing should sell to Shaw on the credit of the firm, could hold Lovejoy responsible as partner.

We respectfully submit that this is not law. It is contrary to the statement of the law in *Story on Partnership*, § 160, *and Parsons on Partnership*, 413, above cited, and rests on no sound principle. "Each new creditor is bound to inquire who are "the parties interested at the time in the firm, if he would be "safe in his credit and dealings with them."

The only decided case, which we have been able to find that holds contrary to our view of the law, is *Southwick as. McGovern*, 28 *Iowa*, 533.

The decision in that case rests upon fallacious reasoning and misapprehension of the cases cited. Several of the points there decided, upon the admissibility of evidence, we have already fully observed upon.

The holding, in that case, that the statements to the plaintiffs by their clerk that a certain person named, had informed him of the existence of the partnership, and that the defendant McGovern was a partner, and that he had received the same information from the mercantile agency, is there held to be competent, on the ground that knowledge derived from *public notoriety* is competent. Reasoning that fails to discern the

broad distinction between *public notoriety* arising from public observation of the acts, business and dealings of a firm, and the mere private statement of an individual having no knowledge but hearsay from another, or the statement of the compiler of a mercantile agency concern, deserves but little attention.

In the case of a new customer, upon whom the duty of inquiry rests, the question is not what *he believed* to be the fact. It was his business to *ascertain* the fact before he trusted; and the former members of the firm are in no way responsible for his credulity, nor for information furnished through such sources as are indicated in the case of Southwick vs. McGovern.

So the decision in that case, that the prior existence of the firm having been established, and the plaintiffs' *knowledge* thereof (which in the case was no knowledge), the defendant could only be discharged from liability—the plaintiff having no knowledge of the dissolution—by proving that after the dissolution and before the debts were contracted, he caused notice thereof, by PUBLIC ADVERTISEMENT, to be published in the usual way and to the usual extent, *is not law*.

We have already adverted to the principles which govern such cases, and authorities sustaining them.

The statement that "this is unquestionably the rule of the authorities," is unfounded, and not supported by the authorities cited to maintain it, except by a stray *dictum* of the judge in the case of *City Bank vs. McChesney*, 20, *N. Y.* 240, where the question was not the contested point.

The judge in the latter case refers, in support of this dictum, to the opinion of Senator Verplanck, in *Vernon vs. Manhattan Co.*, 22 *Wend*, 194. The language used by the Senator is this: "Justice requires that the severance of the united credit "should be made as notorious as was the union itself. This is "accomplished by the rule that persons having had particular "dealings with the firm, should have particular notice of the "dissolution or alteration, but that a general notice by adver- "tisement *or otherwise*, would be *sufficient* for those who knew "the firm only by *general reputation*."

The assertion here is that a notice by advertisement is *sufficient* notice to persons not having dealings with the firm; not that it is essential, or the *only* protection. The necessity for any general notice is also considered as applicable to persons who know of the firm by *general reputation*, not to strangers or persons who have casually heard of it.

So in *Bristol vs. Sprague*, 8 *Wend.*, 424, (cited in the Iowa case) where the case went against the plaintiff on another ground, and there was no occasion for exactness in stating the rule as to notice, the general rule is stated to be that "notice should be given by publication in a newspaper of the county, or in some *other* public and notorious manner." Advertisement is mentioned not as the *only* but as a *sufficient* kind of general notice.

In *Ketchum & Black, vs. Clark*, 6 *John*, 147, (cited in the Iowa case), the judge, after saying that in England *it seems* that notice must be given in a particular newspaper, The London Gazette, and that there is no such usage here, says that public notice must be given in a newspaper in the city or county, or in some *other way* public notice must be given, the reasonableness of which may become a question of fact in the particular case.

This, instead of the rule laid down in the Iowa case, shows that no such rule exists. It may be remarked that the language of the judge in the case of Ketchum & Black vs. Clark that in England, publication in the Gazette seems to be *necessary*, is inexact. No English case holds that. The rule in England is that publication in *that paper is sufficient* notice to all persons not dealers.

Godfrey vs. Turnbull, 1 *Esp. Rep.*, 371.

The cases of *Martin vs. Searles*, 28 *Conn.*, 43, and *Lyon vs. Johnson*, 28 *Conn.*, 1, merely hold that as to persons not dealers with the firm, notice of the dissolution published in a newspaper of the place, is ordinarily *sufficient*.

The case of *Goddard vs. Pratt*, 16 *Pick.*, 416—434, (cited in the Iowa case) does not mention newspaper notices. The

Court says, (page 432) "It was a question of fact for the jury, "whether actual or *constructive* notice of such dissolution had "been given, so as to exempt the members from responsibility "for acts done and contracts made in the name of the firm by "by the late acting and managing partners."

And on page 434, the Court adds: "The general rule is, "that to preclude a party in such case, it must be shown that "he has actual notice of the fact, or that notice has been pub- "lished as the *act and declaration of the parties themselves*, "which shall operate as a constructive notice to all persons."

The only other case referred to in the Iowa case in support of its position is *Davis vs. Allen*, 3 *Conn.*, 168, which does not refer to the kind of notice or vehicle through which it is to be conveyed. The treatises on Partnership referred to support it no better.

The result of the whole is that notice in a newspaper of the town or county is *sufficient* as against persons not dealers with the firm but who knew of its existence from the notoriety of its operations, and therefore *advisable*. But any facts or circumstances which would *tend* to raise a presumption of notice as against a customer, would surely be equally available as against such persons; and that as to a mere stranger, whose confidence has not been captured by previous acts and dealings of the parties openly carried on within his cognizance, no notice is necessary, it being his duty before dealing, to ascertain the fact.

Carter vs. Whalley, 1 *Barn. and Ad.* 11.
McIver vs. Humble, 16, *East.*, 169.
Grosvenor vs. Lloyd, 1, *Met.* 20.
Creglor vs. Durham, 9, *Ind.*, 378.

The attempt to hold the defendant Lovejoy responsible in this action, is upon a ground purely technical. It is undisputed that he received no consideration or benefit from the transaction, and had no knowledge of it. He had given notice of the dissolution when it occurred, to all persons who had dealt with the firm; and after a lapse of four and a half months, during

which the business had been carried on in the name of J. B. Shaw alone, and had a right to regard himself as free from danger of liability on new contracts, at least with strangers.

On the other hand, Angell and Mead, in making the sale to Shaw, used no reasonable caution, if they expected to hold any body but Shaw responsible. They trusted practically to the representations of Shaw and the statements of some stranger at Reed's Landing. Had they made proper inquiry, they would have ascertained that the firm was dissolved; and neither law nor justice requires that Lovejoy should bear the consequences of their negligence and folly.

F. R. E. CORNELL,
Counsel for Plaintiffs in Error.

IN SUPREME COURT.

OF THE UNITED STATES.

JAMES A. LOVEJOY, Impleaded with J. B. SHAW, heretofore impleaded with SUMNER W. FARNUM,

Plaintiff in Error.

vs.

CARROL C. SPAFFORD and DEWITT C. CLARK, Copartners as SPAFFORD & CLARK.

Defendants in Error.

ARGUMENT AND BRIEF OF

HENRY H. HAYDEN and
W P. BARTLETT.

OF EAU CLAIRE,

For Defendants in Error.

Free Press Print, Eau Claire, Wis.

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ARGUMENT AND BRIEF OF

Henry H. Hayden and W. P. Bartlett,

OF EAU CLAIRE,

FOR DEFENDANTS IN ERROR.

The facts in this case as disclosed by the testimony are as follows:

On the 15th day of April, 1868, the defendant, James A. Lovejoy and one Rufus W. Farnum were engaged in business in Minnesota as

copartners in the name of Farnum & Co., said Rufus W. Farnum being a mere nominal partner, and having no real interest in the business of Farnum & Co.

That on said 15th day of April, 1868, said Farnum & Co., and
3 J. B. Shaw, herein impleaded as a defendant, associated themselves together by a written article as copartners in the business of buying and selling lumber and of operating a lumber yard at Davenport, Iowa, in the firm name and style of J B. Shaw & Co., and continued such business to the 12th day of May, 1870, when such copartnership was in fact dissolved, except so far as it might be necessary to continue the same for the settlement of its business, which dissolution was in writing and endorsed on the margin of the original article. At the time of dis-
4 solution two daily papers were published at Davenport, Iowa, and no notice of such dissolution was published, and no notice was sent or given to the plaintiff's, or to their agent who sold the lumber, or to Ira Mead, who sold a portion of the lumber and transferred the draft received by him therefor to the plaintiff's.

A E. Angel, who as agent of the plaintiff's, sold a portion of the lumber and received therefor one of the drafts in suit at the time such sale was made, knew the firm of J. B. Shaw & Co., by reputation,
5 and did not know of its dissolution until after the commencement of this suit.

Dewitt C Clark, one of the plaintiffs, knew the firm of J. B. Shaw & Co., in the Spring of 1870, and then heard that J. B. Shaw, Farnum & Lovejoy composed such firm, and before such firm had in fact been dissolved, and prior to May, 1870, Mr. Wilson and Mr. Ingram had spoken to the plaintiff, Clark, of this firm, and had mentioned to him the partners. This was in April, 1870, at plaintiff's Bank in
6 Eau Claire, J. B. Shaw being there, introduced by Wilson, and borrowing some money. And plaintiff's were bankers, and lived at Eau Claire, Wisconsin, at the time of such dissolution and ever since, and had no knowledge of such dissolution until June, 1873, long after such sales of lumber, and receipt of drafts in suit by them.

And Ira Mead, who sold a portion of the lumber and received one of the drafts in suit therefor, and from whom the plaintiff's obtained such draft, had before he sold such lumber heard of this firm of Shaw & Co., and that Shaw was not good, and that Shaw, of Davenport, and 7
Lovejoy and Farnum constituted such firm, and had heard the same at Eau Claire from one Clough, who had been a clerk at Davenport, and from his (Mead's) partner, one McGuire And knew the firm of J B. Shaw & Co., by reputation before the giving of the draft to him, and did not hear or know of the dissolution of such firm until after the commencement of this suit.

On the 27th day of September, 1870, one A. E. Angel, for the plaintiff's, and one Ira Mead, for himself, had each a quantity of lumber at Read's Landing, in the State of Minnesota, of which the plaintiffs and said Ira Mead were the respective owners, and there met the defendant, J. B. Shaw, who applied to purchase the same. That said Shaw then and there told said Angel and said Mead that he, Shaw, was a member of the firm of J. B. Shaw & Co., and that Lovejoy, of Minneapolis, was a partner in that firm. That thereupon said Mead and said Angel inquired at Read's Landing of a person who was acquainted with persons on that river, and was told by him that the firm was Shaw 9
& Lovejoy, and that persons then and there told them that the defendant Lovejoy was perfectly good That at said time and place they inquired of one Judge Cady, and he said those men at Minneapolis were good, and at the same time said Shaw gave to said Mead a business card of J. B. Shaw & Co ,, in one corner of which was the name of J. B. Shaw, and in the other the names of James A. Lovejoy and S. W. Farnum, and that such card is now lost. That thereupon said Angel, for the plaintiff, and said Mead for himself, respectively, sold said lots of 10
lumber to said J. B. Shaw & Co., and received therefor the accepted drafts in suit, which were then and there drawn by J. B. Shaw on J. B. Shaw & Co, Davenport, Iowa, and then and there duly accepted in writing by said J. B. Shaw & Co., by the hand of J. B. Shaw, and then delivered to said Mead and to said Angel, respectively, in payment

for said two lots of lumber, and the Mead draft afterwards duly endorsed and transferred to the plaintiffs, both of said drafts having afterwards been duly presented for payment, which payment was refused and said drafts thereupon duly protested.

11

No notice of such dissolution had been given to the plaintiff's, or said Angel or said Mead, and no public notice of such dissolution had been given.

And the following matters having been submitted by the Court to the decision of the jury, said jury by their verdict for the plaintiff's necessarily found that at the time of such sale the plaintiff's and said Mead had reasonable knowledge or information that the firm of J. B. Shaw & Co., still existed, and sold said lumber to said firm upon the credit of said J. B. Shaw & Co, and relied on such credit; and that said firm of J. B Shaw & Co, in fact existed till May 12, 1870, when it was dissolved; that defendant Lovejoy was a member thereof, and nothing had been done to bring public or actual notice of such dissolution to the plaintiffs or their assignors, and no public notice of the dissolution had been given.

12

13

Verdict for the plaintiffs.

Motion for new trial made by defendant, and denied, and judgment for plaintiffs.

Upon the trial of this action the plaintiffs, under objection, proved the declarations made by Shaw at the time of the sale of the lumber and giving of the drafts, for the sole and expressed purpose of showing that the sale was made to J. B. Shaw & Co., and on their credit, and that the sellers relied on such credit, (Case, folios 43, 45, and 46) and defendant Lovejoy's counsel claim that these declarations were immaterial and could not bind nor affect Lovejoy.

14

And plaintiffs proved that the persons selling this lumber at Read's Landing inquired of persons there, who composed the firm of J. B. Shaw & Co.? what their responsibility was? and the results of such inquiries.—Case, folios 44 and 46; to which testimony Lovejoy's counsel objected that it was immaterial and could not affect said defendant.

And plaintiffs proved the statements which prior to the sale of this lumber had been made by individuals to the plaintiff, D. C. Clark, as 15
to the existence of this firm of J. B. Shaw & Co., and as to who were the members thereof, and who, by common report, were known to him to constitute that firm; to which defendant Lovejoy's counsel objected, as immaterial and incompetent, and excepted. Case, folios 47, 48 and 49.

Under the circumstances of this case it was clearly competent to show that Mead and Angel, in making these sales and receiving these accepted drafts, gave credit to the firm of J. B. Shaw & Co., and re- 16
lied on such credit; and the declarations of Shaw at that time made to them were competent and admissible evidence of that fact.

Southwick vs Wheeler & McGiven, 28 Iowa, 533, 537.
Carter vs Whalley, 20 Eng. Com. Law, 333.
Bernard vs Torrence, 5 Gil. & J., 383.
1 Lindley's Partn 419.
Kennedy vs Bohannan, 11 B Munroe, 120.
Whiteside vs Lee, 1 Scammon, 550. 17
Warden vs Ball, 37 Ill., 81.

For the statements made by Shaw at the time of this transaction, and the consequent inquiries of the sellers, and the result of such inquiries are, in addition to the direct testimony of said Mead and Angel, the strongest testimony to determine on whose credit they relied in making such sale.

And thereupon defendant Lovejoy offered to prove that before this lumber was sold, and at the time of such dissolution, the fact thereof 18
was generally known at Davenport, Iowa, and along the river, and that said dissolution was a matter of general repute and knowledge in Davenport, and that all lumber dealers in Davenport were informed of it, and that such fact of dissolution had been communicated to persons other than the plaintiffs, but expressly stated in this connection that he did not expect to prove actual notice of the dissolution to the plaintiffs, or to the persons who sold the lumber. (Case, folios 51, 50, 52) to

19 which plaintiffs objected as incompetent and immaterial, which objection was sustained and defendant excepted.

And Sumner W. Farnum, heretofore impleaded, testified for the defendant, that he, Farnum, with said J B. Shaw visited Eau Claire in September, 1870, and called on the lumber dealers there, and was then asked by defendents counsel: Whether on that occasion he or Shaw gave any notice of such dissolution to the lumber dealers at Eau Claire, and if so to whom and in what manner? To which plaintiffs
20 objected that the same was incompetent and immaterial, unless defendant proposes to prove actual notice to plaintiffs or to those who sold the lumber, or notice by publication which objection was sustained and defendant excepted Case, folios 52, 53.

And said defendent then offered to prove by said witness, that while he, said Farnum and said Shaw, were on that occasion at Eau Claire, the said Shaw notified all, or nearly all of the lumber dealers there, and
21 in the vicinity, that said firm of J. B. Shaw & Co., was dissolved; to which plaintiffs objected as iumaterial and incompetent unless defendant proposes to show actual notice to plaintiffs, or to those who sold the lumber, which objection was sustained and defendant excepted. Case, folio 53.

And the witness, Farnum, testified that on said occasion at Eau Claire, he visited the office of the Chippewa Lumber Company, and conversed with the man in charge thereof at said office. And the de-
22 fendant's counsel then asked said witness: Did you or Shaw, prior to said sale of the lumber, give to the Chippewa Lumber Company notice of the dissolution? if so, when? where? and in what manner?—to which the plaintiffs objected as incompetent and immaterial unless defendant proposes to show actual notice to the plaintiffs, or said Mead, or said Angel, which objection was sustained and defendant excepted. Case folio 57.

The retiring partner, Lovejoy, would continue liable to all persons
23 who had knowledge or reasonable information of the prior existence of the firm, and who supposed it still to exist, though they had not form-

erly dealt with it, for dealings had with the remaining partner upon the credit of said firm and relying thereon, unless such remaining partner had given actual notice or public notice of the dissolution, or caused the same to be given.

And that such fact of dissolution was generally known at the place of partnership or at Eau Claire, or elsewhere, or that certain persons or classes of persons, not including the plaintiff or Angel or Mead, had been informed of such fact. does not constitute actual notice or public notice of any kind and is in fact mere individual notice of the most private character, more or less disseminated, and can only be available when it becomes, and is in fact, actual notice to the plaintiffs, which is not here claimed. 24

Southwick vs Wheeler & McGiven. 28 Iowa, 538.

2 Collyer on Partn' 530, 532.

Martin vs Searls, 28 Conn, 43. 25

Lyon vs Johnson, 28 Conn, 1.

Goddard vs Pratt, 16 Pick. 428, 433, 434.

Davis vs Allen, 3 Comstock, 168.

City Bank vs McChesney, 20 N Y., 240.

Bristol vs Sprague. 8 Wendell, 424.

Kitchen & Black vs Clark, 6 John. 144.

Bernard vs Torrence, 5 Gil. & J. 383.

Watson on Partn. Ch. 7, 280, 284. 26

LeRoy, Bayard, et al. vs Johnson, 2 Peters, S. C. R. 196, 199.

Carter vs Whalley,, 20 Eng. Com. Law, 333.

Pitcher vs Barrows, 17 Pick, 361.

Parkin vs Carruthers, 3 Esp. 248.

Godfrey vs Trumbull. 1 Esp 371.

Gorham vs Thompson, Peake 42.

And within the above authorities we may go further, than the learned Judge did in this case, and may hold that the only public notice, which can exonerate the retiring partner in the absence of actual 27

notice, is a notice by publication in a newspaper, if there is one. But in this case there was no public notice of any kind. The only notice proved or attempted to be proved consisted of private communications made to private individuals other than the plaintiffs, and Mead and Angel, and there was no proof offered of a change of sign, or failure, or notorious destruction of business, or removal or suspension, or of any
28 public act to notify the dissolution to the community at large. For as to these plaintiffs, Lovejoy was not a dormant partner, but they and Mead had been informed of and knew of, his being a partner before the partnership was in fact dissolved. Case, folios 45, 48, 49.

Evans vs Drummond, 4 Esp. 89.

Bernard vs Torrence, 5 Gill & J. 383.

Collyer on Partn. 537 and notes 1 and 2.

Carter vs Whalley, 1. Barn & Adolph, 11.

29 Kelly vs Cowen, 5, Cowen, 534.

3 Kent, 5 ed. 68.

Story, Partn, 159, 160, and Note.

Goddard vs Pratt, 16 Pick, 428.

In regard to the exceptions taken to the charge of the Court, it is apparent that the whole charge must be considered together, and each part of the charge excepted to must be viewed in connection with the remaining portions thereof, and of course qualified by the same.

30 These portions excepted to, are :

"If you find that the sale at Reed's was in fact made to the firm, and that the plaintiffs in making such sale gave credit to the firm of J. B. Shaw & Co., and relied on such credit, then Lovejoy cannot escape liability unless he has given legal notice of the dissolution of the firm "

And "In this case there is no evidence of any public notice, for private communications made to particular persons at the place where the firm did business, or elsewhere, is not sufficient notice to bind other
31 persons."

And "Did the plaintiffs, or their assignors, as in the case of the Mead draft, have reasonable knowledge or information that the firm of J. B. Shaw & Co., still existed at the time the lumber was sold. Knowledge obtained from public notoriety and from individuals who had knowledge thereof was sufficient to warrant the plaintiffs in such a belief. Case, folio 61.

And "So far as Lovejoy is concerned unless he had done something to bring public or actual notice of the dissolution to these plaintiffs, or their assignors, or had given public notice of the dissolution, he would continue liable, and cannot escape if you are satisfied credit was given to the firm. Case, folio 66. 32

And we submit, in view of the authorities before cited, that such portions as qualified by the remainder of such charge, are a plain, correct, and comprehensive statement of the law applicable to this case, for the knowledge and information which plaintiffs and said Mead had of the prior existence of said firm, and their belief in its existence at the time of the sale, are undisputed. 33

As to the requests to charge the jury, made by the defendant and refused, (folios 62, 63, 64 and 65. The second as modified by the Court is a correct statement of the law.

The third was properly refused.

The fourth and fifth requests are incorrect statements of the law, in that they seek to charge persons, who have known of the existence of the firm, with knowledge of its dissolution, when no actual notice or public notice has been given. And in fact the reasonableness of plaintiffs knowledge or information of the existence of such firm was submitted to the jury. Case, folio 59. In the absence of lawful notice the firm would be presumed to continue to exist, as to those who had formerly known of its existence, 34

As to the sixth request, there is no dispute but that Lovejoy had been a member of the firm, and Plaintiffs and Mead knew that fact and did not know of his retirement, that of itself was sufficient; and information from general notoriety was competent to form their belief in 35

its continued existence, and that notoriety might well consist of the speech of persons who had not dealt with the firm.

The first half of the seventh request is substantially included in the charge of the Court, and in this case there is no evidence of any kind of public notice being given of such dissolution; and the remainder of such seventh request is the same in effect as the fourth and fifth requests heretofore considered, and is subject to the same objections, and was rightly refused.

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As to the ninth request: The evidence is undisputed that at the time of the sale Shaw stated that he was a member of the firm of J. B. Shaw & Co.; that the sellers of the lumber had heard that Shaw was not responsible; that Shaw said that Lovejoy was his partner; that before selling the lumber, they inquired as to Lovejoy's responsibility and became satisfied it was good; that they sold the lumber to J. B. Shaw & Co., not to J. B. Shaw; that before delivering this lumber they received in payment these drafts, duly accepted by said J. B. Shaw & Co., and that in making such sale they relied on the credit of J. B. Shaw &. Co, that is relied on the acceptance instead of on the name of the drawer. And against these admitted facts the plaintiffs and said Mead could not be charged with knowledge that such purchase was for Shaw's individual benefit, or as to what peculiar fund was to be used in the payment of the same, as such purchase was made in the ordinary course of business formerly carried on by J. B. Shaw & Co., and the testimony is undisputed that they relied on the acceptance in making the sale. Said requests were properly refused, and there is no error.

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22 Wend 889
10 Rich Ch 433
28 Iowa 433
20 NY